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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT A. FALISE; LOUIS and CHRISTIAN E. MARKEY, JR.,	)KLEIN, JR.; FRANK MACCIAROLA;))As Trustees,	
	) Plaintiffs,	) Case No.
	) 99 CV 7392 (JBW)	vs.
) Related to:		
	) 97 CV 7640 (JBW)	THE AMERICAN TOBACCO COMPANY;)
RJ REYNOLDS TOBACCO COMPANY;	)B.A.T. INDUSTRIES, PLC;	)
BROWN & WILLIAMSON TOBACCO INCORPORATED; LIGGETT, INC.;	)CORPORATION; PHILIP MORRIS)and LORILLARD TOBACCO	))
COMPANY,	)	)
Defendants.	)----------)	

VIDEOTAPED DEPOSITION OF MICHAEL J. MAHAN
New York, New York
Thursday, August 3, 2000

Reported by:
ANDREA L. KINGSLEY, RPRCSR NO. 001055
JOB NO. 109944

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August 3, 2000
10:13 a.m.

Videotaped deposition of MICHAEL J. MAHAN, held at the offices of Winston & Strawn, 200 Park Avenue, New York, New York, pursuant to agreement, before Andrea L. Kingsley, a Notary Public of the State of New York.

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A P P E A R A N C E S:

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WINSTON & STRAWN

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ALSO PRESENT:
LOURDES TORRES, Legal Assistant
VIDEOGRAPHER

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M I C H A E L J. M A H A N, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. STOLPER:

Q. Good morning, Mr. Mahan. I hope we have overcome our technological difficulties.

A. It looks like it's working.

Q. A couple questions about your background to start off the deposition. Can you confirm that your address is DELETED?

A. I can.

Q. Is your date of birth July 16, 1954?

A. Yes, it is.

(Mahan Exhibit 1, expert report, marked for identification, as of this date.)

Q. We have put before you what has been marked as Mahan Exhibit 1. Do you see that?

A. I do.

Q. It is a copy of your expert report?

A. That is correct.

Q. You have had a chance to look at it

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and make sure that's a true and accurate copy of your expert report?

A. Yes, it looks like the report.

Q. It states in the first paragraph that you have a bachelor of science degree in political science from Western Michigan University; is that right?

A. That's right.

Q. Do you have any other formal degrees?

A. No, that's it.

Q. What is your current title at Philip Morris?

A. Vice president in the brand group responsible for Marlboro. The actual title is Vice President Marlboro.

Q. You have been at Philip Morris for 22 years?

A. Actually, it will be 23 in October, I think, of this year, yes.

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Q. Did you work any place prior to Philip Morris?
A. You mean coming out of college?
Q. Coming out of college.
A. Yes. I taught school for a very,

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very brief period of time in a suburb of Detroit, Michigan.
Q. From there you went to Philip Morris?
A. I had a job working evenings at a hotel while I was looking for a job but the first, I guess, professional or career type position following the teaching position was Philip Morris.
Q. What position did you take when you first joined Philip Morris?
A. I joined as a sales representative which is an entry level position in the sales force.
Q. The product that you were selling at the time were cigarettes?
A. That is correct, um-hmm.
Q. You have been involved throughout your tenure at Philip Morris in sales?
A. Throughout my tenure?
Q. Yes.
A. No, I haven't been in sales throughout the course of my whole career, no.
Q. Have you done things other than sales at Philip Morris?

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A. That is correct.
Q. Can you describe those?
A. I have been in marketing since -- approximately 1990.
Q. Anything else other than sales or marketing at Philip Morris?
A. No. My entire career has either been in the sales organization or the marketing organization. I have had different roles in those organizations but they have been in one of those two.
Q. Your degree is in political science I believe you stated; correct?
A. That is correct.
Q. Anything about your political science degree that assisted you in sales or marketing at Philip Morris?
A. There's not a specific technical skill you learn with a degree in political science. I generally think a liberal arts degree is good for a whole host of things.
Q. Nothing specific though out of the degree that helps you with sales or marketing?
A. No, not that I would say.

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Q. If I can draw your attention to page 3 of your expert report, in particular the last paragraph on the page, do you see the sentence that reads, "I will base my opinions on my

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education," is the first thing you list there?
A. Um-hmm.
Q. Can you explain what you meant by that statement?
A. I just think my education, I look at education, skills and experience in totality and my education is part of my background. In addition to that, you know -- well, as I said, you know, I consider my education part of my background generally and it helps me formulate all my opinions.
Q. When you say your education, you are referring to your political science degree?
A. Yes. And to the extent that through the course of my career, you know, you are involved in ongoing seminars and things of that nature, I would consider that part of my education. Whether it's from original orientation or anything else. I thought of it, I guess, in a more generic sense then
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specifically the political science.
Q. You said you shifted over from sales to marketing in 1990; is that right?
A. I believe the actual date was late 1989, if I am recalling my memory correctly, but in or about the beginning of 1990, yes.
Q. Maybe the simplest way to go about this, I am interested in the different titles you have held while at Philip Morris and perhaps a job description for each of those titles and maybe we will start with your first job in Philip Morris. It was in sales. It was a sales representative?
A. That is correct.
Q. What year was that?
A. That would have been beginning in October of 1977.
Q. Can you briefly describe what your job description was as a sales representative in October of '77 onward?
A. You would have a -- a person would be hired into a sales representative position and you would have territory carved out geographically that contains the territory
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obviously containing retail stores and your job responsibilities involved the merchandising of the product as well as the sales. You would go into a store and you would make sure our brands were in distribution, you would make sure that they were displayed properly. You might put up sale advertising. And it was geographically based.
Q. It was essentially retail sales?
A. Sales to retail. Not retail sales to the consumer.
Q. Thanks for the clarification.
While at Philip Morris have you -- in either a sales or marketing capacity, have you sold or marketed anything other than cigarettes?

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A. No, sir.
Q. How long did you hold a position as a sales representative?
A. I was a sales representative approximately three years. My next move came in June of 1980.
Q. What move was that?
A. I became assistant division manager in the sales organization.
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Q. Can you describe your job?
A. The assistant division manager at that time would have been the first managerial staff beyond the sales representative and a division might have anywhere from seven to 10 sales representatives that comprised that sales unit and as an assistant division manager my responsibility was to work with other sales representatives training them on how to conduct their job responsibility, how to make a sales call. That sort of thing.
Q. In both the sales representative capacity and division manager, you had responsibility for all of Philip Morris' cigarette brands?
A. First of all, that's an assistant division manager. And my responsibility in terms of the sale and merchandising of the product in those retail stores covered all Philip Morris' brands, that's correct.
Q. How long did you hold the position of assistant division manager?
A. I held that position for approximately one year. 11 and a half months.
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Something on that order. Until the summer of 1981.
Q. Then what happened?
A. In 1981 I was made what was called at that time an area manager of chain sales.
Q. Your job description?
A. The area manager job changed slightly from the previous two in that a sales representative would call on the retail outlets, you would actually go into the stores. When you became an area manager of chain sales many of our programs and sales efforts had to be directed to a chain headquarters who in turn would instruct their retail stores. So it was a position that involved calling on chain headquarters to sell our programs and then subsequently communicating the sales representatives, "Chain XYZ accepted this promotion," what have you.
Q. How long did you hold that position?
A. I held that position for, again, approximately a year, perhaps a little bit less. I think I was moved in May to June of 1982. These positions tend to go about a year in
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duration.
Q. What position were you moved to?
A. My next position then was a division manager position.
Q. Same responsibilities as assistant division manager just larger sales force?
A. No. It was the same responsibilities plus the full accountability, the responsibility of the division manager or of the division rests with the division manager. The assistant division manager is kind of like a manager in training and they train other sales representatives. When you became a division manager you would have that responsibility but you would also have the responsibility for hiring, recommending people for a promotion, salary, administration. Little broader responsibility with respect to the people in the division.
Q. Is this broken out by geography?
A. Yes. Both the division manager and the assistant division manager -- well, all these jobs were broken out by geography, they were geographically based. In the case of a

division, a sales rep would have a geography, a group of sales reps together would have a bigger geography and the division would have a geography of those all combined.
Q. What was your geography when you were division manager?
A. Peoria, Illinois.
Q. That's where you were based?
A. When I was division manager.
Q. That was your territory Peoria, Illinois?
A. I was in Peoria, Illinois. The territory of my sales representatives actually covered a radius, I am guessing on this, Mr. Stolper, I must say, a radius of 100 miles around give or take a few miles.
Q. In 1982 do you have a rough idea how many division managers Philip Morris had in its sales department?
A. I would have to qualify this as a guesstimate because we are doing this from memory. I am going to estimate somewhere on the order of 180, but I would like to stipulate that I am doing it from memory and I am doing a

little division in my head.
Q. Does Philip Morris currently have division managers?
A. No. We have actually -- we have people in similar roles. Over the course of time job structures and responsibilities change and we don't have a title in the sales organization now called division manager.
Q. How long did you hold that position?
A. I held that position for approximately two years, from 1982 to 1984.

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Q. What position did you take in 1984?
A. 1984 I relocated to the New York office in the sales training department and my title, I believe, was administrator of program development, if I recall correctly.
Q. What did you do as administrator of program development?
A. At that time that was a position in the sales training and communications department and essentially what we did was we created training materials, training aids for people in the field sales force. It was a staff function. And it was a New York training function that

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developed training materials. We did some individual training but primarily it was the creation of training materials for the field sales organization.
Q. Again, these materials were to be used for all brands of cigarettes?
A. They may be. It may, for example, if we were launching a new brand, you may create materials for how a division manager in the field would train their sales representatives on that new brand but, again, you would have -- you would have responsibility depending on what the subject was but we created materials that covered all of our brands, that's correct.
Q. There came a point in time while you were at Philip Morris when your job focused on one particular brand?
A. That is correct.
Q. That brand is Marlboro?
A. No, I was responsible for brands prior to being responsible for Marlboro.
Q. At what point in time did you become responsible for a particular brand?
A. In 19 -- as I said, in 1989 when I

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moved to the marketing department, I was responsible for a couple of our discount brands. My first brand responsibilities were Alpine which was a small, very small brand and another product called Bristol. Which was another brand in our portfolio.
Q. Did you hold any job -- any other job titles between '84 and '89?
A. Yes, a variety of different titles.
Q. Maybe the easiest thing to do is plod on through these titles.
What was your next job after 1984?
A. In late 1986 I moved to the sales and planning department.
Q. As?
A. I was manager for the drug and mass merchandiser trade classes.
Q. Could you explain your job description?
A. Sure. Cigarettes in the United States are sold in different trade classes. Cigarettes are sold in different trade classes:

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They are sold in drug stores, they are sold in supermarkets, they are sold in convenience

stores, they are sold in mass merchandisers. And that time we had a department that would look at our sales strategies, our merchandising programs, and it was structured in such a way that you would have managers who are responsible for developing a degree of expertise on those trade classes and how to best merchandise our products from those trade classes. So the sales planning department was broken that way and when I went into -- structured that way into these trade classes and when I went into that position I was given the responsibility for formulating sales strategies for the drug class of trade and mass merchandiser class of trade.

Q. When you say drug you mean drug stores?

A. Drug stores, yes.

Q. What's an example of a mass merchandiser?

A. Probably the easiest examples would be a place like K-Mart and Wal-Mart. As a matter of fact, K-Mart and Wal-Mart are mass merchandiser trades.

Q. Again, that involved all brands being

merchandised to drug stores and mass merchandising stores?

A. That's correct. You would be working on sales strategies for the portfolios for the brands.

Q. Tell me a sales strategy that perhaps you employed in that position.

A. You would decide or you would evaluate how the stores merchandise their cigarettes. Do they put them in a self serve position or not, how many counter displays do they typically have. And then you would formulate, for example, or you may be involved in the development of a particular type of display that fits well in that store versus another sort of store and you would actually maybe build a merchandising program around that kind of display. You would also brief people analytically on these stores contribute X amount to our volume and things of that nature.

Q. You mentioned the term merchandising. You gave a little bit of color to that. I am going to ask you a series of questions a little bit later on about some definitions of these

terms but would you say merchandising as a function fell within the sales, within sales responsibility?

A. I think merchandising probably at the retail store level and constructing merchandising plans for how the product is positioned at the retail level is primarily a

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sales responsibility. I don't think anybody does these things or formulates these strategies without the input of other departments like marketing but I would say it probably rests with sales more than with marketing. I think that's fair.

Q. So you held this position in 1986.

A. Yes.

Q. How long did you hold it?

A. I was a manager in sales planning from 1986 to 1989. I had a series of different responsibilities within that. I went from manager of the drugstore and mass merchandiser trade class next to the manager of the supermarket trade class and held that position for a period of time. That would have been my next immediate responsibility change.

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Q. Does Philip Morris sell more cigarettes through supermarkets as opposed to drug stores and merchandising stores?

MR. HOWARD: I am going to object on the ambiguity of selling through but go ahead and answer.

A. I'm sorry, could you ask the question again.

Q. Sure. You mentioned that your responsibility shifted from drug stores and merchandising stores to supermarkets. I am trying to appreciate the difference between supermarkets versus drug stores and merchandising.

A. I see. I understand.

At that time when I made that move supermarkets accounted for a greater percent of industry volume than did drug stores and mass merchandisers.

Q. How much of a greater percent at the time?

A. Oh. You are taxing my memory. Again, please, this is -- you got to give me some leeway on this because I am doing it from

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memory, but as I recall, during that particular time, drug stores would have accounted for about 9 percent of industry sales, I think mass merchandisers would have accounted for about five or six percent of industry sales and supermarkets would have been close to 25.

Q. So your shift in responsibilities, did you perceive that as a promotion?

A. Oh, yes. I had broader responsibilities.

Q. From that position you then shifted over to marketing in 1989; is that right?

A. No, sir. There was another job in sales planning which was -- this would have been 1988, I believe, that I was made what was called a group manager of pack outlets.

Q. That was your title?

A. Yes.

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Q. What is a pack outlet?
A. Well, as I mentioned before, there are different classes of trade and at that time we structured the department where it was broken into two larger groups, one that was responsible for the trade classes we would consider to be

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pack outlets which is convenience stores. At that time we separated convenience stores and gas stations so it was convenience, convenience gas, I believe those were the trade classes involved. And then there was another group manager who was responsible for carton outlets. That would have had supermarkets, mass merchandisers and the drug class of trade would have been included with that group. So you were managing other managers of the trade classes within the sales planning department.
Q. As group manager of pack outlets you then were managing other managers of merchandise trade classes?
A. Yes.
Q. It's the next job up in the hierarchy?
A. It actually was a new position created at that time but I did view it as a promotion and I had managerial responsibilities over managers of the trade classes.
Q. Was that your last position in sales before moving over to marketing?
A. That was my last position in the

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sales organization before moving over into marketing, that's correct.
Q. Throughout your tenure in sales, who did you ultimately report to? Was there a head of sales?
A. Oh, yes.
Q. An executive vice president?
A. Pardon me?
Q. Was it an executive vice president or vice president?
A. I didn't report directly to them but there was a senior vice president responsible for the sales organization and, in actual fact over my -- from the period from 1979 until 1989 I think there were two senior vice presidents of sales that were responsible for the organization that had responsible for all of sales including headquarter sales and field sales.
Q. So through your tenure in a sales capacity at Philip Morris you never focused on any one particular brand of cigarettes; is that right?
A. No, in sales you really are -- we don't have separate sales organizations by

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brand. All the sales functions deal with the entire portfolio of tobacco brands.
Q. The trade classes were broken out by

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geography as well; weren't they?
A. I'm sorry, I don't know I understand what you mean.
Q. Your last few jobs from 1986 on you were involved in merchandising to trade classes as you described it.
A. Constructing merchandising programs and things of that nature that would work in trade classes, yes, sir.
Q. So when you were responsible, for example, for drug stores and merchandising stores, was that nationwide?
A. Yes. Yes. Just a clarification. I wouldn't be calling on those stores, what I was doing was looking at the trade class and developing programs.
Q. The folks who actually called upon those stores were still broken out by geography?
A. Yes.
Q. And those would be sales representatives?

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A. Yes or area managers. But yes.
Q. 1989 you moved over to marketing?
A. That is correct.
Q. How come?
A. I was offered a position in brand management. I had done a variety of different sales functions. I certainly would say at that particular point in time in my career I was ambitious and I wanted to move as quickly as I could to the top and breadth of experience is one way to achieve that goal. So I was asked to join the brand group and I jumped at the chance.
Q. I think you have used the terms marketing and brand management interchangeably; is that accurate?
A. Actually, not quite. Brand management is a function within marketing. Marketing includes other functions other than brand management but brand management is a function within it.
Q. As Philip Morris goes, is there a hierarchy or distinction between the sales and marketing groups? I promise not to show the transcript to any of those folks in sales.

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A. It's actually a very interesting question. No, certainly not in a formal sense. There are people in sales functions that have higher grades than -- and lower grades than people in brand functions. I wouldn't -- both are headed by senior vice presidents and there's people underneath it whose jobs are graded based on, you know, a fair assessment of responsibilities, but sales doesn't report to brand. If that's the genesis of the question.
Q. Do people try to get the brand jobs more than the sales jobs?
A. I think that was probably more true in the past than it is today. The brand

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management jobs were considered to be prestigious jobs and given to people who were considered to be star performers. There's probably a little bit of that today but I think over the course of the last 10 years the sales organization has -- I think it's leveled some. These -- you must understand, these are kind of gut feelings about the two organizations.

Q. You mentioned grades. Is that a salary grade?

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A. Yes. There is different grades and different levels, that's correct.

Q. Is there any other type of distinction made among Philip Morris sales and marketing employees?

MR. HOWARD: Objection to the form. You can answer.

A. I'm sorry, could you say it again?

Q. Sure.

You use the term grades. Is that term exclusively -- does that term exclusively refer to salary distinctions among employees of sales and marketing of Philip Morris?

A. Yes. Essentially they are salary grades and people at different grade levels get an office and another grade level might get a better office but yes -- and they are calibrated throughout the organization. It's not there's one set of grades for sales and one set of grades for marketing.

Q. I'm afraid to ask, but I assume you have had several different job titles within the marketing group at Philip Morris?

A. Oh, yes.

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Q. Maybe we will allow a couple minutes to rip through those.

MR. HOWARD: Before we go, let's take a break. I want to check on a chair for the reporter.

THE VIDEOGRAPHER: Off the record at 10:47.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 11:09.

BY MR. STOLPER:

Q. Mr. Mahan, you mentioned that in 1989 you took a position in the marketing department; is that right?

A. That's correct.

Q. What was your title?

A. My title was brand manager.

Q. That was for two -- for Alpine and Bristol?

A. Yes.

Q. Those are two different brands; correct?

A. Correct.

Q. How many people reported to you in

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that position?
A. Not counting an administrative secretary, I had two assistant brand managers.
Q. That's it?
A. That's it.
Q. Briefly describe your job responsibilities as a brand manager.
A. Brand manager is responsible for developing the strategy, the campaign and the marketing plan for a brand and is in turn responsible as well for executing and implementing those plans.
Q. What's a marketing plan?
A. Marketing plan would be, for example, would look at the next year, you would allocate resources, a budget, how much of that money would go to, for example, retail promotion, how much of it would go to advertising, how much of it would go to anything in the mix of marketing disciplines and then that basically is the construction of the brand plan.
Q. How do you decide allocation?
A. You would look at your business. You look at a whole host of factors. You look at
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your market share. You might look at where if a brand is performing in one geography versus another, you know, you want to have certain -- you might have certain media objectives. There's no -- I guess what I am saying is there is no prescribed formula they do this step and this step two. Marketing is as much an art as it is a science.
Q. I understand there may not be a particular formula but I am trying to understand some of the variables or facts you would consider in making the allocations as a general matter.
A. You would generally have a share objective. You would look at available research, you would look at pricing in the marketplace to determine maybe the level of retail promotion you would do. You would look at key competitors. And all these would be weighed into the mix of your thinking to determine, you know, how much of the resources to devote towards promotion, towards advertising, et cetera.
Q. When you said available research, you
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are talking about marketing research?
A. Yes.
Q. What's an example of marketing research?
A. Market research would include, you would obviously look at shipment share, you would look at --
Q. Shipment share?
A. Yes.
Q. Maybe we stop there. What is

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shipment share.
A. Shipment share, we look at shipment share in a couple different ways. What we ship out which is our actual sales to the wholesale community. Then there is what we would call at the time I was a brand manager then we used the Nielsen service, today it's IRI, but basically it's consumer off take which is audits that tell you what consumers are taking off the shelf and buying. There are other measures for share data, something called stars. We ship to wholesalers, they ship to retailers, they give you share information. So there's a variety of share measures that would all fit within the
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genre of market research that would be an example.
Q. So in that context when you are referring to share are you talking about the discrepancy between what Philip Morris sells versus what the consumer actually purchases?
A. No, you are not necessarily looking for discrepancies. There might be different numbers but basically what share is you have a brand that accounts for a certain percentage of -- if it's market share, that brand counts for a certain percentage of industry sales.
I think he wants you.
(Discussion off the record.)
Q. Is there a difference between shipment share which is the term you used and market share which is what I believe you just described in your last answer?
A. No. Market share is a brand percentage of total industry sales. There are different measures of market share is the way I would characterize it.
Q. How long did you hold the position of brand manager for Alpine and Bristol?
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A. I am thinking.
Q. Take your time.
A. I want to say I was brand manager at Bristol and Alpine until mid 1991.
Q. You took a new position?
A. Yes.
Q. What was that?
A. I was category or -- excuse me, I was director of strategic planning for the discount brand group.
Q. Strategic planning is a function within the marketing department?
A. At that time it was a function within the individual brand groups. Strategic planning is used in different departments. In this particular job it was a function within each individual brand group.
Q. What cigarettes fell within the discount brand group?
A. At that time we would have been talking about Bristol, Alpine, Cambridge and

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Basic.
Q. How is your job as director of strategic planning different than as brand
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manager?
A. It was actually kind of a staff function within a line organization. There was a director who was responsible for that brand group and I actually served as his helper with regard to analysis and the constructing of plans for those brands. The brand managers would run those brands but I would help the director of that group evaluate and look at the entire portfolio of that group of brands.
Q. Brand manager reported to the director?
A. Yes. Yes, that's correct.
Q. What are some of the kinds of information that you would -- that you look to in your strategic planning function?
A. At that time I would look at the market shares of all the individual brands, I would look at the market shares of like competitors, I would look at pricing. Different sorts of things. Just essentially evaluate it, the state of our business in the discount category.
Q. How long did you hold that position
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for?
A. I held that position for about -- approximately to mid 1993. I want to say summer of 1993, maybe August of 1993.
Q. You took a new position?
A. Yes, sir, I did.
Q. What was that?
A. Then I was made a category director within the discount brand group.
Q. Again, strategic planning?
A. No, this was -- I actually -- the brand managers actually would report to me.
Q. How long did you hold that position?
A. I held that position until the summer of -- late summer 1994.
Q. You took a new position?
A. Yes, I did.
Q. What was that?
A. I was made director of fulfillment operations that's out of the brand group.
Q. When you say it's out, what do you mean it's out of the brand group?
A. It's part of marketing but it's not part of the brand group.
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Q. I see. When you mentioned there were different functions besides brand within marketing, this is one of the other ones?
A. That's correct.
Q. What is fulfillment operations?
A. At the time I took the job there was

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no fulfillment operations, we actually created fulfillment operations. But what fulfillment operations is is an operational arm of marketing that -- let's see how best to describe this -- adult smokers can send in proofs of purchase and redeem those things for items. And the fulfillment operation is essentially the infrastructure for receiving those proofs of purchase, fulfilling the orders, insuring they are mailed out and the customer service with respect to customer complaints.

Q. This is where you get Marlboro hats and T-shirts if you send in coupons?

A. We no longer do Marlboro hats and T-shirts.

Q. In 1994?

A. In 1994 you could get among other things -- I don't recall if there were caps then

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but there were T-shirts, things of that nature, along with other items, tents, sleeping bags.

Q. Was there something called a Marlboro store?

A. There was a program, the title of the catalog, if you will, called Marlboro Country Store. Which was the title of one of the catalogs.

Q. Was that something that fell within your responsibilities, fulfillment operations?

A. My responsibility associated with it was the fulfillment of the items. I would not have been -- as director of fulfillment operations I would not have been involved at that point in the development of that catalog but I would fulfill the items, yes.

Q. When you say fulfillment, you make sure the merchandise was actually mailed out to the customer?

A. Oh, yes, the whole operation from setting up the structure for the proofs of purchase that come in to validate the orders to what they used to call at that time was pick, pack and ship, to customer service. All of it

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was fulfillment operations.

Q. How long did Philip Morris run a program where you can redeem coupons for merchandise?

A. Well, Philip Morris doesn't run a program. Different Philip Morris brands runs a program. Do you understand what I mean?

Q. Slightly confused.

A. Well, Philip Morris doesn't run a program generally. The brands have their own individual programs.

Q. I see. So the Marlboro Country Store is being run by the Marlboro brand?

A. Yes. It's a catalog for the Marlboro brand, yes.

Q. So there isn't a Philip Morris store per se?

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A. That's correct.
Q. Were there other brands besides Marlboro that offered merchandise in exchange for coupons or proof of purchase?
A. Yes, there are other brands that do it. Virginia Slims has done it. Merit has done it.

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Q. Any others?
A. I am trying to recall. I think all the brands at one time or another or almost all the brands, certainly Merit, certainly Virginia Slims, certainly Basic have redeemed an item or a couple of items for proofs of purchase. In terms of ongoing catalogs, I believe the only ones that had run them were Marlboro, Virginia Slims and Merit. I think my recollection is correct.
Q. In terms of timing of these types of programs, do you recall when Philip Morris' brands first began doing these redemption programs?
A. Yes, I think Marlboro first did it in terms of a catalog. The first program actually began -- I think it was launched in the fourth quarter of 1992 and the catalog covered a period in 1993. And that was really the first time we had done a, you know, large scale catalog program.
Q. It was out of that program that the need arose for a director of fulfillment operations?

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A. That's correct.
Q. So prior to say 1992, Philip Morris, none of those cigarette brands that Philip Morris had offered redemption programs? You know what I mean? Where you -- what you said, you redeem proof of purchase coupons in exchange for some type of merchandise.
A. I don't know whether they never offered an item, for example, with a proof of purchase. There are things called bounce backs where somebody would send in a proof of purchase and they might get one item back. The first large scale implementation of the kind of programs we are speaking about began at that time.
Q. What was the purpose of that large scale program --
A. Could we -- my microphone just popped.
Could you repeat the question?
Q. What was the purpose of the large scale program?
A. The purpose would be to reward loyal adult smokers and to add value to the brand.

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Obviously as people used your brand they would collect these proofs of purchase and could

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redeem them for valuable merchandise.
Q. Was there any particular part of the market of smokers that the program was designed to attract?
A. I don't know exactly what you mean. Could you restate it again please?
Q. Would you like it read back?
A. Yes.
(Record read.)
A. No, I think in the case of Marlboro, Marlboro is a broad market base brand, it's the leading seller among all sorts of groups of adult smokers. The programs are primarily what I would say defensive in nature. They are primarily designed to reward your existing smokers for continuing to remain loyal to your brand and that really is the primary audience.
Q. When the Marlboro Country Store was launched in or around 1992 were you involved in any way in that program?
A. Well, first of all, just as a point of clarification, Marlboro Country Store was one

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of the titles of the catalog program. It wasn't the first one.
Q. Okay. Which was the first one?
A. The first one was Marlboro Adventure Team and that was the title of a catalog that was sent out.
Q. Let me clear this up. If I refer to the program in general as the redemption program is that suitable?
A. That's fine.
Q. Were you involved in the redemption program when it began in 1992?
A. No. When that program began in 1992 I was in the discount brand group, not in the Marlboro brand group, so I would have had nothing to do with the original.
Q. What was your first involvement in the redemption program?
A. My first involvement in the redemption program was when I became director of fulfillment operations which dealt with the fulfilling of the items.
Q. So the discount brands didn't have redemption programs while you were involved with

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them?
A. We certainly didn't have a redemption program like a big catalog program. I am searching my memory in terms of I am sure from time to time we might, for example, redeem a singular item for a proof of purchase, but very, very small in nature. Not the redemption programs I believe that you are speaking about, no.
Q. The redemption program was exclusively catalog based when you became involved?
A. I would say they were, again, they

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were -- the bulk of the volume in the redemption was largely catalog based. That's not to say, for example, and this is just an example, doing this from memory, that a brand may say, you know, send in 10 proofs of purchase and you will get a coffee cup. There could have been or there were programs like that that were small in nature. But the lion's share of the redemption and volume going through existed in these catalog programs, that's correct.

Q. Taking as an example the Marlboro

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catalogs, you mentioned there were a couple different types at different times. You are familiar with those catalogs?

A. Oh, yes.

Q. The items, who chose the items that were to be featured in those catalogs?

A. The items would ultimately be selected by the brand groups.

Q. Were you involved directly or indirectly in that selection?

A. In the program in 1992/93?

Q. Or 1994 when you became director of fulfillment operations.

A. No. Again, when I was director of fulfillment operations my responsibility was the creation of a department that oversaw what could be best characterized as kind of like a mail order operation to make sure the orders were received, they were properly processed, the items were in stock, that they were properly picked and packaged and sent out. It was more of an operational arm within the marketing function rather than the development of the catalog itself.

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Q. Understood. I will jump out of chronological order here. Did there come a time when you were involved with the collection of items to be included in these catalogs?

A. Yes.

Q. That would be when you were involved with the Marlboro brand?

A. Yes, that would be when I went to the Marlboro brand group later in my career, that's correct.

Q. I am sure we will get to that shortly, but I have a question about the selection the items. What are some of the considerations?

A. Well, there are numerous considerations. One is that we try to pick a broad array of items that will appeal to people with varied interest, that they would be -- it sounds like marketing lingo, but thematically consistent with Marlboro and Marlboro Country. We would put items in that were of a mix in value in terms of the number of UPCs or proofs of purchase that would be required. We would look for items that in one way or another would

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be considered, you know, kind of unique and different but that somebody would, you know, might find it interesting.

We would consider items that our adult smokers may want but would perhaps not purchase for themselves. And all of them would be likewise, in one way or another, thematically linked to Marlboro country. I mean, they would have a tendency to be kind of western in nature. That's why we would have a lot of camping gear and sleeping bags, jackets, things of that nature. So all those sorts of things would go into the mix. And, you know, the intent, really probably the best way I can describe it is to make sure there was variety.

Q. What time frame were you involved in the selection of items that were included in the Marlboro catalogs or catalog?

A. I would have looked at and approved the items in 1999 -- well, the catalog for 1999 would have been developed in 1998. I would have reviewed those. And the catalog for 2000 would have been prepared in 1999 and I would have reviewed those items. It's important, you
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should understand, there are people in the brand group that work on the items and I would approve them or not approve them. I wouldn't sit there and do the individual selection.

Q. But you are aware of the consideration that goes into selecting different items; right?

A. Oh, sure.

Q. Let's take '98. Do you recall some of the items that were included in the catalog?

A. I would have to think for a bit because, believe it or not, for me -- there's been nine of these catalogs and they kind of run together. I know we had a program we developed for 1998, for 1999. I believe we had sleeping bags. We always include jackets. I know we included cookware but I think that was in -- we selected that for the 1999 catalog for 2000. I think we featured one of our cookbooks in the 1998 catalog.

Q. Did you have sporting equipment?

A. I know we had a set of horse shoes in one, I simply don't recall whether it was 1998 or 1999. I would actually have to look at the
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catalogs to remember specific items.

Q. You said it was intended, the catalogs were intended to reach a broad array of smokers?

A. Broad array of adult smokers and primarily they are defensive in nature. They are a marketing vehicle that tends to be to reward your existing adult smoker base. They are not programs that tend to be particularly

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good at attracting other smokers -- smokers of other brands. That's not to say it doesn't.

Q. You are aware that there are underage smokers who smoke Marlboro; is that right?

A. I am aware of it. It's unfortunate, yes.

Q. And underage would be under the age 18?

A. Underage -- I think it varies by state to state in the union. But certainly smokers under 18 are underage smokers, unlawful smokers.

Q. There wasn't any effort made to insure that underage smokers wouldn't be attracted to the items selected in, say, the

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Marlboro catalogs; isn't that right?

A. No, I would not agree with that. For example, when we select clothing we only select clothing in large and extra large sizes. And we are clearly conscious of making sure that the items that we put in that catalog are items that are appealing to adults. I have no interest in having young people participate in the catalog or any other program.

Q. So you are saying that since the catalogs have come out, '92 onward, there haven't been any items in there that are attractive to children? I will say underage smokers. That's the term we were using.

A. I can't say there's an item in the catalog that may be attractive to somebody underage, what I am saying to you is that that program is designed, as are all our programs, for adult smokers and, indeed, when we are talking about our catalog programs, we draw the boundary at 21, not even at 18.

Q. Is there any place in writing where it's stated in the selection criteria Philip Morris or the brand folks should try to select

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items that aren't attractive to underage smokers?

A. Well, I believe, I believe that is embodied in the advertising code which we live by in terms of promotional items and it is, you know, it is part of our core understanding and our mission. Our mission states we want to be the most responsible and respected marketer of products made for adults who choose to smoke and all of our brand people are instructed to be exceedingly sensitive to making sure that when they select promotional incentives or anything else they are selecting items that appeal to adult smokers.

Q. I didn't mean to segue off the chronology. We were up to 1994.

How long did you hold the position of director of fulfillment operations?

A. I was director of fulfillment operations, again, for approximately a year. I

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received a new position in July of 1995.
Q. What position was that?
A. The position was vice president of marketing services.
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Q. For any particular brand?
A. No.
Q. Can you describe your position?
A. Yes. The marketing services portion of the marketing organization, is perhaps the best description of it, is the operational arm of marketing. Among the areas that fell within the marketing services area would be fulfillment which I spoke about that department a moment ago, event marketing, media, and database and -- database and direct marketing. And those groups comprise marketing services overall.
Q. These are separate functions, these are functions within the marketing group in addition to the brand?
A. Yes, they are separate from the brand group, that's correct.
Q. So as vice president you were involved in the coordination of events and media planning, as an example?
A. Well, I was involved in it to the extent that the groups that did those functions ultimately would report into me in terms of -- those groups would report to me, that's correct.
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Q. Was it just -- was your role purely supervisory of these other groups?
A. No, I wouldn't say it was purely supervisory. I would be -- let me think the best way to put this -- in the sense that it was a broad group of different folks or different departments and there were a lot of people there, I would suggest, you know, a big portion of my job was supervisory and to provide guidance but I wouldn't say it was limited to being supervisory.
Q. I am trying to get a sense of what you did at that job. Can you give an example of a prong you were directly involved in?
A. For example, let's go back to fulfillment, the director of fulfillment would manage our fulfillment vendors, the warehouses. I would have to approve the contracts, for example, that they agreed to with those vendors.
Q. As vice president of marketing services?
A. Yes.
The event group, for example, would deal with outside suppliers who, for example,
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would do our bar nights, and they would have to try to schedule the calendar of events between the brands so the brands weren't in the bar at the same time. These are examples.
Q. You were involved in the coordination

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of that?
A. I would be involved in the coordination of that. The database group would look at our database and look at, you know, the number of names we have and also would coordinate with making sure that when names were pulled from the database that tapes were created, send the direct mail out and I would be involved in that and all these groups worked under the supervision of a director and I, in turn, supervised those directors. So I wouldn't characterize it as strictly supervisory in nature given the fact that there were an awful lot of people, some 70 odd folks in four different departments. It was in big measure, I should say large measure supervisory.
Q. How long did you hold that position?
A. I was vice president of marketing services from 1995, somewhere in 1995 until
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March of 1998.
Q. You took a new position?
A. Yes, I did.
Q. Which one?
A. I was made vice president of Marlboro promotion.
Q. Can you describe your position?
A. Sure. This would have been a position back in the brand group and I was responsible for Marlboro's promotional plan and the management of the brand managers and the brand managers who were responsible for developing Marlboro's promotions.
Q. Maybe from the inside that doesn't seem circular. You have different brand managers under that are responsible for Marlboro?
A. Oh, yes. Marlboro is a big brand so you have --
Q. There are different types of Marlboro?
A. No, sir. They are not different brand managers -- let me backtrack. Yes, there are different kinds of Marlboro. There are not
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brand managers of those different kinds of Marlboro. Our brand managers have specific responsibility for marketing disciplines within the Marlboro brand group.
Q. What are some of those different marketing disciplines?
A. You would have, for example, a brand manager in Marlboro who is responsible for retail promotion. You would have a brand manager in Marlboro who is responsible for direct marketing. You would have a brand manager in Marlboro that is responsible for the catalog program. You would have a brand manager in Marlboro responsible for our, what we call relationship marketing programs and sweepstakes. And in some of those cases you actually had a

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catalog director because it's a very, very large brand. No one person can do all these functions.

Q. So you managed these brand managers?

A. I managed all the brand managers. At the time I took over there was one category director who were involved in Marlboro's promotional efforts, I was not responsible for

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the entire brand including advertising, and I in turn reported to somebody that was responsible for the entire brand.

Q. Who is that?

A. That was the vice president of Marlboro who had the responsibility for the total brand.

Q. That's person's name?

A. That was Nancy Lund at the time.

Q. Were there other vice presidents of Marlboro that reported to the vice president of Marlboro?

A. When I was there?

Q. Yes.

A. No, sir.

Q. So there was no vice president of Marlboro marketing?

A. No, sir. The vice president of Marlboro was responsible for Marlboro marketing. Promotion is one component of that.

Q. Were there other components that reported to the vice president of Marlboro?

A. Yes. There was a director of advertising.

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Q. Any other components?

A. Those would have been the direct reports into the vice president of Marlboro.

Q. You held this position until April of 1999?

A. That's correct.

Q. You became the vice president of Marlboro?

A. That's correct.

Q. That would give you responsibility for supervisory responsibility for director of advertising for Marlboro?

A. That's correct. I am responsible for everybody that works in the Marlboro brand group.

Q. Is there a vice president of Marlboro that reports to you?

A. No, sir.

Q. They didn't replace you?

A. They did not, sir. My view is that job was created to train somebody to take over the vice president of Marlboro.

Q. Were you the first person to hold the position of vice president Marlboro promotion?

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A. No, there was one prior to me.

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Q. Can you briefly describe how your job responsibilities as vice president of Marlboro differ from your prior position as vice president of Marlboro promotion?
A. I am responsible for the entire brand, setting the creative direction, setting the strategy, implementing the plan, of which promotion is clearly the largest part, but my responsibility now is for the brand in totality in terms of providing the strategic direction, directing the creative, supervising the Marlboro brand personnel and executing our programs. Or seeing they are executed.
Q. This is all marketing function?
A. Yes, this is all marketing.
Q. Who do you report to?
A. I report to the senior vice president of marketing at Philip Morris USA.
Q. There's a separate senior vice president of sales?
A. There is a separate senior vice president of sales.
Q. You have no reporting ties to that

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person?
A. No, sir.
Q. Philip Morris historically has always kept sales separate from marketing?
A. Yes, sir. They have always been separate departments. There was a period of time where Philip Morris had an executive vice president who had the heads of marketing and sales report to them. That position has been in and out of the organization. I think it's important to understand that a lot of these titles and structures are fluid as times change, business changes, the structure can change from time to time.
Q. How would you describe your current grade which is the term I believe you used earlier today?
A. I think I am in -- I think I am in what's called a banded grade. I am not an HR expert. It is -- brand manager positions might start at a level grade 14 and the most senior director might be a grade 17 and then you go into banded grades and I don't know exactly why they have such things. I think it's

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calibration, but that's the best way I can describe it. Sorry.
Q. Have you testified before?
A. I have.
Q. At trial?
A. I testified in -- I am not a lawyer. I testified in a courtroom I believe at an injunctive hearing on one occasion.
Q. On behalf of Philip Morris?
A. On behalf of Philip Morris. That's correct.
Q. Any other times?

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A. Testified in court?
Q. Yes.
A. No, that is the only time.
Q. Do you recall what the injunction hearing was about?
A. Yes.
Q. Can you tell me what it's about?
A. It was an action we had taken to enjoin people from selling what is commonly referred to as gray market product, repatriated product, product that's designed for export that is shipped back into the United States.

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Q. Did you submit an affidavit as well in that case?
A. Yes, I believe I did.
Q. Have you testified at any other instance on behalf of Philip Morris?
A. Testified -- again, not being an attorney, are you talking about testifying in a courtroom?
Q. Anywhere. Deposition. Courtroom.
A. Yes, I have been deposed before for Philip Morris as well.
Q. How many times?
A. Once.
Q. When was that?
A. It was very recent, I think it was a week ago today.
Q. What case is that?
A. This is an action that is -- I want to get my terms right because I am not an attorney. This is an action brought by the State of California with regard to a piece of media, it was a name generation piece that they had concerns and reservations about.
Q. Who is the "they" in that sentence?

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A. I believe it's the State of California. It's the state attorney general or the state attorney general's office who has brought this action. Again, I want to make sure my terms are right.
Q. And the action is against Philip Morris?
A. Yes, it is an action against Philip Morris.
Q. It's your understanding that the State of California has a problem with some advertising of Philip Morris?
A. This was -- yes, they had a problem with a specific piece of -- call it advertising. What it was was an advertisement that was a survey that if somebody wanted to get onto our database they could fill out the survey, you know, certify that they are a smoker 21 years of age or older as part of that survey in addition to answering other questions, that they could then take that, mail it in and then later they would get a coupon for a free pack of cigarettes in the mail in consideration for having --

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having filled out the survey. And the State of
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California has obviously taken issue.
Q. Do you have an understanding of the nature of the issue?
A. Yes, I do.
Q. Can you tell us what it is?
A. The State of California believes that that piece violates a sampling ban that exists by statute, I believe, in California that says that cigarette samples and coupons will not be given out on public grounds.
Q. Do you believe that the State of California has a basis for its contention against Philip Morris?
MR. HOWARD: Objection to the extent it calls for a legal conclusion. You can answer.
A. I disagree with the state's position -- with the State of California's position on the case. I categorically disagree.
Q. You say you testified a week ago?
A. About a week ago, yes. I don't recall whether it was last Thursday or Friday.
Q. Did someone ask you to testify?
A. The state asked for a witness who
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best understood the programs of Marlboro and I agreed I was the appropriate person to be designated as the witness in that case.
Q. Can you briefly describe the nature of your testimony?
MR. HOWARD: Objection to the form of the question.
Q. You can answer.
A. Could you state it again please?
(Record read.)
A. My testimony, an awful lot of my testimony was similar to this in the sense that the attorney asking me the questions, wanted to know what my role was, what my role is at Philip Morris, what my role is in Marlboro. They asked me a bit about could you describe how a piece like this is developed and how that piece is distributed, how often did you do it, and things of that nature. If that answers your question. I mean, that's kind of what we talked about.
Q. You have been asked to testify in this case, the Falise matter?
MR. HOWARD: Object to the form of the question to the extent it potentially
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invades legal privilege. I caution the witness to the extent his answer not reveal communications with counsel.
A. Could you re-ask the question?
Q. Are you planning on testifying in this case, when I say this case, the Falise case?
A. I would assume I am going to testify

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in this case when and if it goes to trial, yes.
Q. At some point in time you were asked to get involved in this case on behalf of Philip Morris?
MR. HOWARD: You can answer that yes or no.
A. Could you ask it again?
Q. Sure. I will say it again. At some point you were asked to get involved on behalf of Philip Morris in this case?
A. Oh, yes, I was asked to be involved in this case.
Q. When was that?
A. I really can't recall a date. I would say sometime in the last half a year. I don't have a specific day in mind.
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Q. Was it 2000 or '99?
A. I believe it would have been 2000. That's correct.
Q. Who asked?
A. I am confused on this. Can I have a minute? This is an issue I don't know where we are dealing with privilege or what have you.
Q. Sure.
MR. HOWARD: Why don't we take a break.
THE VIDEOGRAPHER: Off the record at 12:06.
(Time noted: 12:06 p.m.)
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A F T E R N O O N S E S S I O N
(Time noted: 12:59 p.m.)
M I C H A E L J. M A H A N, resumed and testified as follows:
EXAMINATION (Cont'd.)
BY MR. STOLPER:
THE VIDEOGRAPHER: Back on the record at 12:59 p.m.
Q. Welcome back Mr. Mahan. Hope you enjoyed your lunch.
A. I did, thank you.
Q. Before we resume the questioning I wanted to make a statement on the record based on conversations I have had with counsel off the record and it will be plaintiffs' position that any inquiry and statements by you this afternoon with regard to your -- I will leave it at that -- we will not consider that to be a waiver

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of any attorney/client privilege.
MR. HOWARD: We accept that representation and also, as we talked before, we might as well at this point agree, if you are willing, about any use of

documents because it's my understanding you are not intending to put any documents as to which we still maintain the privilege, to use those today, but if inadvertently one of them is among that privileged group that, again, our allowing the witness to answer questions about that will not constitute waiver.
MR. STOLPER: We agree to that. It's my understanding we are not using any privileged documents which would include those titled Bliley documents and if we were to, to the extent Mr. Mahan testifies about documents we inadvertently show him that you consider to be privileged, we would consider that to be a non-waiver of any privileges that run to you or Philip Morris.
MR. HOWARD: Very well.
Q. With that I guess we resume.
Before we took our break I started to ask you about Exhibit 1, your expert report, and, more generally, your involvement in this case.
When did you first hear about this

case? When I say this case you know I am talking about the Falise matter?
A. Yes, I know you are talking about the Falise matter.
Q. When did you first hear about the Falise case?
A. I probably first heard about the case generally, this really is a guess, year, year and a half ago. I knew there was a case involving asbestos and tobacco but it's just very hard to pin a date on exactly when the first time I have ever heard of such a thing.
Q. What was the context on which you heard about the case?
A. When I originally heard about it, obviously the tobacco industry is one that has a great deal of litigation pending and just in the context of this is one of the cases, this is the nature of the case and the issues involved. Nothing more complicated than that.
Q. Do you know how you heard about it?
A. Originally?
Q. Yes.
A. Again, sir, working in this industry

there is a lot of litigation and you hear about different cases from time to time. I can't even recall a specific instance when the first time Falise or asbestos or the Manville trust, I

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can't recall a specific date even.
Q. But there came a point in time when you were asked to get involved in this case?
A. Yes.
Q. Do you recall when that was?
A. It would have been approximately and, again, I have to deal with approximation, I would say about six months ago. Sometime shortly after the first of the year in general terms.
Q. Other than your testimony that you gave at the injunction hearing, is this the first -- is this the only other case that you have been involved in for Philip Morris?
MR. HOWARD: Objection to the form. Object to "involved in" but answer if you are able.
A. You say the only other case. I was involved in, as I mentioned, and, again, I believe the term is a hearing for an injunction
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on a gray market case and I was deposed in the California action that I mentioned, so there has been two prior pieces of litigation I have had involvement in.
Q. Is that it other than those two?
A. Yes. The reason for my hesitancy is when I was heading fulfillment operations I was trying to recall if there was ever an issue with a supplier but I believe those are the only other two I was involved in.
Q. Were you asked to get involved in the Falise case?
A. Yes. I had had conversations -- the matter was pending, I met with counsel, counsel wanted to talk about the kinds of things we do in marketing. I talked about the kinds of things we do in marketing, in marketing Marlboro, and I was asked to be involved in it, yes.
Q. Do you recall who asked you?
A. It may have been Alan. I don't recall specifically. I don't recall a conversation where the question was posed to me can you become involved in this case. I think it was kind of more evolutionary in nature.
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Q. When you were asked to get involved -- let me ask you this, do you have an understanding of the distinction between a fact witness and expert witness in litigation?
A. I think generally.
Q. What is your understanding?
A. I think a fact witness would be expected to testify that, you know, you or the company or somebody did such and such a thing on a given day, that you are speaking about a very, very specific set of facts and an expert witness testifies, I think probably the best way to describe it would be more a discussion of kind of general practices and things we engage in. I guess that would be the way I would characterize

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it in my own mind.
Q. When you were at some point asked to get involved directly in this case were you asked to get involved as a fact or expert witness?
A. No, I was asked to get involved as an expert witness.
Q. And not as a fact witness?
MR. HOWARD: Again, you are asking
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for his understanding as opposed to a legal distinction, legal conclusion, so I would object to the legal aspect.
MR. STOLPER: Yes.
A. Again, without being able to recall a specific conversation paragraph by paragraph about the case and my involvement in it and the exact terms that were being used, my understanding would be, again, based on my knowledge of the kinds of things we do, that I would be testifying to those practices and whether it was stated to me I would be an expert witness or that is what I construed as a result of the nature of the kinds of things I would be talking about, rightly or wrongly, I believe myself to be an expert witness in the case.
Q. What would you consider yourself to be an expert on?
A. I consider myself to be an expert in tobacco marketing in totality including cigarette marketing in the United States. I spent 23 years doing it.
Q. You said your testimony -- you are going to testify about Philip Morris' practices.
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Is it the marketing practices that you are referring to?
A. I said I believe my testimony would likely involve the marketing practices, perhaps the sale practices, but the whole general topic of how Philip Morris goes about the business of, you know, creating their marketing programs, implementing their marketing programs, their sales programs, the whole element of cigarette marketing and that was an assumption about what I believe my testimony would entail.
Q. Are you making an assumption because you don't know with certainty about what you are going to testify about?
A. Well, I know from what I have in my report about what I am expected to testify on. I obviously have no way of knowing prior to coming in here which particular questions you may ask and what areas you may be particularly interested in. As I indicated in my report, I expect to testify, I expect to testify and I guess it's that expectation in a general sense. I simply just don't know what questions you are going to ask.
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Q. Let me draw a distinction between today, because obviously you don't know what I am going to ask you, I would be a little nervous if you did, as distinct from what you are going to testify to at trial. So when you say you expect to testify, are you referring to trial?
A. I expect to be asked questions whether in deposition or in trial about Philip Morris' marketing practices and that's what I expect to testify about as I said, again, in deposition, in trial. I am not particularly making a distinction in this regard.
Q. I will ask you just a couple of questions to flesh out your expected or anticipated testimony.
You talked about marketing programs. Are you talking about current programs that Philip Morris has in place?
A. I would expect to be expected to testify about current programs. I would likewise expect to have general knowledge of past programs.
Q. Past meaning to the point you joined the company, 22, 23 years ago?
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A. As head of the Marlboro brand I would expect to be knowledgeable or generally knowledgeable about that brand's history. I obviously expect to be knowledgeable about the way things work and how we market our products for the entire duration I have been with Philip Morris. With respect to my own brand, I have some -- I have knowledge just because in order to run the brand you have to have some knowledge of the history prior to when I joined Philip Morris.
Q. You said generally you will be testifying about marketing programs and now you just said it could be past as well as present programs. Anything specifically about Philip Morris' marketing practices or programs that you are going to be testifying about?
A. I am going to obviously testify in response to questions that I am asked about things I am knowledgeable. In terms of examples, if I am asked a question about a program or strategy or a practice that exists today or in the past, if I have knowledge about it, I am going to testify to what I know.
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That's the best way I can answer the question.
Q. Maybe I will go at it a different way.
Exhibit 1 is your expert report. I believe you already identified that as such. Did you write that report?
A. No. If you are asking me if I wrote this thing out sitting at my desk, no, I did not.
Q. Do you know who did?
A. No, I don't know the specific person.

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I believe the drafting was done by counsel. I reviewed drafts. I did markups on it to make sure I was comfortable. But who actually wrote each individual word, I do not.

Q. Do you have copies of the markups or drafts?

A. No, sir.

Q. Do you know who you sent the drafts to?

A. I believe I returned them -- I believe I returned them to Alan Howard.

Q. Were they -- all of them went to Alan Howard?

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A. I only really have a recollection of one time sitting down with it and making some markings and then reviewing it. That's it.

Q. So an attorney for Philip Morris wrote the first draft of the report; is that right?

A. I think -- no, no. Well, the answer to that question is an attorney wrote the report. I don't believe the attorney wrote the report in isolation. We had conversations about my background, about my history, about my knowledge. We had questions about -- we had discussions about the kinds of things we do in marketing. Then the attorney drafted the report, I looked at it, I recall making some markings on sending it back and I reviewed it and that was the process.

Q. Do you know how many different drafts you marked up?

A. As I said, my only recollection is one time sitting down and making marks on it. I don't recall beyond that.

Q. Do you remember when that took place?

A. It would be a guess on my part.

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Q. This year?

A. Yes.

Q. Spring, winter?

A. I would say late winter, early spring but, again, it's not an event in my memory like I remember a specific day.

Q. Fair enough.

Who else besides Mr. Howard did you meet with in context of preparing this report?

A. I met with Mr. Howard, Mr. Glass, I think there was another attorney from their firm, a woman, I don't recall her name. But I met with counsel. That's it.

Q. How many times did you meet with them?

A. I think we've -- I met with counsel twice.

Q. Do you know how long each time you met with them?

A. I would say in a total between the two, I am going to guess, 10 hours.

Q. You don't recall specifically?

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A. No. I recall a discussion, it might be less than that, I recall having a discussion

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in this office about this case that I think took up an afternoon. I had another discussion very, very recently that took up the better part of an afternoon. So it might only actually be eight hours in discussing this case.

Q. That's the total amount of time you have spent with the lawyers talking about this case?

A. I would say that. Again, recognizing that I am talking in generalities in terms of a few hours then, a few hours now, I would say eight, 10 hours max.

Q. My initial question in terms of how much time you spent was really focused on preparing the report, getting the report done as opposed to the total amount of time you spent on the case. How many times did you meet with Mr. Howard to prepare for this thing? Once?

A. I think once. I am under oath and, again, I might have had one session with them going through it. I recall going -- I recall being asked questions about my background, I recall the report being sent to me, I recall sitting down, having a discussion and having it

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marked up and that is the extent of my recollection.

Q. What were some of your markups?

A. There was just -- they could have been word changes. I recall at one point in time, there were more than one, I recall they had my university backwards. I think it said University of Western Michigan which isn't correct. I think there were some other markups they were largely wordsmithing changes. Not any major changes of substance. When I read it I believe it accurately reflected the conversations we had and my views and I was comfortable enough to sign it.

Q. Did you have an understanding of what the purpose of the report was?

A. I understand that the report is submitted to opposing counsel that states what my background is, what my beliefs are and what I expect to testify to. I don't have an in-depth knowledge of court procedures and how these reports are used beyond that.

Q. Has your opinion changed at all since the issuing of that report?

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A. No.

Q. If I were an internal auditor at Philip Morris and I came to you and said, listen, I am trying to figure out how much time you have spent on this doing this litigation, this Falise case, and describe to me what you have done, you would say -- what would you say?

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MR. HOWARD: Objection to the form.
Go ahead.
A. If you were an internal auditor at Philip Morris?
Q. I am trying to figure out if you were asked what have you done, how much time have you spent and the tasks associated with it so far, you testified that you had a meeting to discuss this report with Mr. Howard and then you had a subsequent meeting where the report was discussed but it was after the report was done and that's my understanding. I am trying to find out if there was anything else that you have done.
A. I would say that counsel asked me about the kinds of things I do in marketing at Philip Morris USA and my history. They took

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that, they drafted a report --
Q. That's after one meeting?
A. Yes, I guess that would be after a meeting.
Q. Okay.
A. Counsel drafted the report, I made some changes to it, pencil marks on it, the report was redrafted. I signed it and I have had two sessions talking with counsel about this case. That's the best I can -- the best way I can describe it.
Q. The total amount of time on the three meetings that you have had with counsel is about roughly eight to 10 hours?
A. Eight, 10. You know -- could it be 12? Yes. I think in order of magnitude those are the kinds of numbers we are talking about.
Q. Have you read anything about this case?
A. Do you mean like newspaper articles, things of that nature?
Q. Anything. I am trying to figure out what you know about the case.
A. In sessions with counsel I have

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looked at documents. Beyond that, I don't recall reading anything.
Q. Have you ever seen the complaint in this case?
A. I don't recall seeing it.
Q. Do you know what a complaint is?
A. Yes.
Q. Can you describe generally the documents that you reviewed with counsel?
A. We've looked at Philip Morris internal documents. Market research documents. I saw a document about some research I think that was commissioned by an outside firm that has to do with our brands. Primarily I guess the characterization would be most of what I've seen is internal memoranda, things of that nature.
Q. All relating to marketing?

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A. Marketing, market research. Yes, I would put it -- the lion's share of it I think in regard to this case, yes.
Q. Anything specifically about marketing or market research?
A. I've seen a variety of documents on
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market research. There's a lot of specifics in the documents. They deal with all sorts of different topics. Every document probably is specific in its own right.
Q. Do you have an understanding of the relevance of Philip Morris' marketing efforts to this case?
A. My understanding of the case is that this is a case that has to do with the risk associated with smoking with a group of asbestos workers and to the degree marketing plays a role in the marketing of our products and the people who use them, that's the way I would view it.
Q. What do you mean by plays a role?
A. To the extent -- marketing is selling, involves consumers and to the extent this is a case about a group of people who were consumers of our products, I would expect the subject of our marketing practices would come up.
Q. Are you aware of any allegations of wrongdoing by Philip Morris with regard to its marketing practices?
MR. HOWARD: Object to the term
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wrongdoing. Go ahead.
A. Can you state the question again?
MR. STOLPER: Let's take a break. He has to change the video.
THE VIDEOGRAPHER: We are now off the record at 1:25 p.m.
(Recess taken.)
THE VIDEOGRAPHER: Back on the record on videotape 2 at 1:29 p.m.
(Record read.)
A. Are you referring to allegations of wrongdoing in this case?
Q. Yes.
A. As I said, I don't recall seeing the complaint so, you know, in terms of specific allegations of wrongdoing, I don't know.
Q. How about general allegations with regard to marketing?
A. I have assumptions and beliefs about what the allegations might be but I have no knowledge of what they are.
Q. How about just for the moment, can I ask you what your assumptions and beliefs are?
A. As long as we are clear that I am
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giving you my assumptions, I am going to make the assumption that the allegation will be made that we targeted asbestos workers or that we

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didn't adequately warn asbestos workers. That our marketing practices enticed asbestos workers. But I have to again say that these are assumptions I am making about what I believe is likely to be in the complaint rather than any specific knowledge I have of it.

Q. If your assumptions are correct, are you prepared to respond to those types of allegations?

A. I am prepared to respond to any questions or allegations that I have knowledge that I can talk to, yes.

Q. If I could draw your attention to your report, does your report in any way address the issue of marketing to asbestos workers?

A. I don't believe, I have to look at it, it's been sometime since I have read it --

Q. I would ask you to take your time, take a look at it.

MR. HOWARD: Can we pause the video?

THE VIDEOGRAPHER: Off the record at

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1:32.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 1:33.

A. May I have the question again so I am clear?

(Record read.)

A. It does not.

Q. It maybe a little late in the day for this but I would like to ask you some definitional type questions. You have used some terms today: Marketing, marketing research, advertising, promotion, merchandising. Perhaps for the benefit of the jury, myself, marketing or advertising background, what would be your quick explanation of what marketing is?

A. I think marketing is the process whereby a product is -- marketing is the all inclusive term that describes the efforts behind advertising, selling, distributing and promoting a product to consumers.

Q. What's the difference between promoting and marketing?

A. I think promotion is an element of

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marketing. It's just one of the elements of marketing, it's the best way I can describe it.

Q. What would be another element of marketing?

A. Advertising.

Q. Any other elements of marketing besides advertising and promotion?

A. Event marketing where, again, you might do -- the best example I can give in our business is like our bar night promotions. Sweepstakes.

Q. You have used event marketing before in the deposition. Would that cover events like the Superbowl?

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A. I don't know what you mean. Is the Superbowl event marketing?
Q. Philip Morris has advertised during the Superbowl before; right?
A. Philip Morris cigarettes?
Q. Cigarettes. For purposes of today's deposition I am not going to ask you anything about Philip Morris other than its cigarette business because I realize Philip Morris is involved in other businesses, but has any Philip
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Morris cigarettes been advertised during Superbowl historically?
MR. HOWARD: Objection. Are you talking about broadcasts or commercials during Superbowl or -- objection to the form.
Q. Any type of advertising.
A. During my tenure at Philip Morris we never advertized at the Superbowl. Because I don't understand the question, did you say did we run commercials at the Superbowl?
Q. I know you run commercials but perhaps at the stadium maybe there are promotional efforts.
A. We do no promotional efforts at the Superbowl. The only thing that would have ever existed at the Superbowl from 1971 on might have been that the Superbowl was held in a stadium in which Marlboro had a sign in the stadium but that has nothing to do with the Superbowl, it's a sign that's in the stadium that happens to be where the game is played.
Q. How about race car?
A. Race car I would consider more of
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sponsorship than I would event marketing. We sponsor a race car. Event marketing I would put more into the context of where we hold an event as, again, the best example I can give you is adult only venues, we do bar nights.
Q. What's the largest event annually that Philip Morris participates in?
A. Most of our events now, I don't know that you could catheterize it a large event, most of our events now -- actually, all of our events really involve primarily, again, what I would call these bar night promotions and some of these definitions are gray areas. I mean, we also, for example, have a program whereby adult smokers can win a trip to a ranch and I would consider that a sweepstakes but somebody else may consider that trip to the ranch an event.
Q. You previously testified that market research is the collection of consumer information? I may be -- why don't you just for clarity sake tell me what kind of information is gathered as part of market research at Philip Morris.
A. Well, market research I typically
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think of as being information about the marketplace. Market shares, maybe share of category. Different geography's contribution to a brand's overall performance. It has to do with the marketplace and that's what I would typically think of as market research.

Q. What about consumer preferences?

A. Consumer preferences, I would consider that consumer research and that consumer research is done at Philip Morris.

Q. So you draw a distinction between market research and consumer research?

A. Yes, I think that's fair, to consider both.

Q. But the consumer research is done within the marketing group?

A. No, there is a department called marketing information and planning that has both consumer research and market research functions in it so --

Q. That's not within the marketing department?

A. That's not within the marketing department.

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Q. I am not going to pretend to have memorized your extended history at Philip Morris but I don't believe you testified that you had any role in the marketing information and planning group or department; is that right?

A. No, I don't work in marketing information and planning.

Q. So you were never really involved in consumer research when you were at Philip Morris?

A. What do you mean by involved?

Q. Did any of your job responsibilities over your 22, 23 years at Philip Morris require you to conduct consumer research?

A. No, I wouldn't conduct consumer research, no. Another department would do that.

Q. Can you describe your interactions -- are you talking about the marketing, information and planning department; correct? Can you describe your interaction with that department over your tenure at Philip Morris?

A. In terms of the best way to describe it, take an example, my current job, we are, in a certain manner of speaking, probably the best

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way I can describe it is like we are a client of market -- the MIP group and they share with us information they feel, we may make a request for ad hoc research being done and, you know, there are interactions between these two groups. So I guess that's probably the best way to describe it.

Q. Would you consider yourself an expert in consumer research?

A. No.

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Q. Merchandising, is merchandising an element of marketing?
A. I would consider merchandising part of the overall marketing effort, yes.
Q. Would you -- I think -- merchandising involves a display of the product?
A. Yes. Display in permanent home where it's placed, correct.
Q. Product placement, do you know what that is?
A. I think the term generally refers to -- referring to product placement in things like films or are you talking about product placement at retail where the product sits?

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Q. Product placement as it relates to -- have you ever been involved in product placement?
A. I haven't -- well, again, I think the product -- it depends what you mean by product placement.
Q. What's your understanding -- you draw two different examples of product placement, perhaps we could ask -- not about movies.
A. I have heard of product placement referred to as placing products in films or movies and my answer is I have never been involved in that. You can use product placement, we are making this sound like scientific terms, if you are talking about Marlboros in a retail store, where should that product be placed on a fixture in a very literal sense, yes, I would be involved in that.
Q. Product sampling, the free distribution of cigarettes?
A. What about it?
Q. Is that what product sampling is?
A. Is product sampling --
Q. Is product sampling the distribution

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of free product?
A. Yes, I think that's a fair characterization of what product sampling is.
Q. Does Philip Morris engage in product sampling?
A. We do not.
Q. Do you know if it ever did?
A. Yes, we did.
Q. Up until when?
A. We stopped giving away samples I believe in 1995 as part of our action against access program.
Q. That was a voluntary program?
A. It was.
Q. So prior to 1995, Philip Morris offered sampling programs?
A. We would have -- we would have sampling programs from time to time, yes, that's correct.
Q. Were you involved in sampling programs?

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A. Going way back in my history when I was in field sales, we would have sampling programs clearly from time to time, so yes,

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um-hmm.

Q. Where are they done?

A. It depends. It was typically, when I said in my history, when I was a division manager, an assistant division manager, a division might have a sampler assigned to it on a part-time basis and the sampling could be done -- you could go into a restaurant and ask the manager of the restaurant, excuse me, do you mind if I sample adult smokers in your restaurant. Things of that nature.

Q. That would entail free distribution of cigarettes to adults in the restaurant?

A. The sampler would ask somebody -- first of all, they would ascertain -- if they are dealing with an adult they would ask that person if they were a smoker. If they were a smoker depending on the brand they say do you smoke regular or menthol, the person would answer the question, they would give them a sample. It's that kind of thing.

There were prescribed rules in 1981 that talked about where it should be done and should it be done near a place where it

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interferes with traffic -- it should not be done -- there was a guideline that was, I think, added to the advertising code, I believe it was in 1981 where it talked about places where it should not be done, as I said, and we would of course adhere very strictly to those guidelines. But it could be done in restaurants, any of the places that adhered to those guidelines and the sample would ascertain whether someone was a smoker 21 years of age or older and they would get a sample.

Q. The guidelines that you referred to, the prohibitions were for locations where youth or kids would be?

A. I am doing this from memory but, yes, there would be guidelines, you would be a certain distance away from any youth centers, things of that nature. And the guidelines went beyond that. As I recall, you don't interfere with traffic. You don't litter. There was a series of guidelines that I believe, my -- as I recall, really was amending the cigarette advertising code which, of course, had originally been established in 1964.

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Q. Any other places where sampling was precluded by this code?

A. You know, you would -- you clearly would not sample around schools, you would not sample on college campuses. I can't recall -- I can't recall each individual line of the code,

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but generally it was to keep it away from where youth or possibility of underage youth congregate.

Q. Were you allowed to sample work sites?

A. I believe code would have permitted that if the work site would have permitted it.

Q. Do you know if Philip Morris sampled at work sites?

A. I don't know. I don't recall ever sampling at a work site.

Q. You aren't aware of anybody else sampling at a work site on behalf of Philip Morris?

A. I don't have any specific recollection except to the extent if somebody is at a restaurant it's a work site for somebody, but I don't have any specific recollection of

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sampling at work sites. It's not to say it didn't happen.

Q. What's a tracking study?

A. A tracking study is -- are the research arms we spoke about a moment ago, is an ongoing service that is conducted by our folks who do consumer research in which they track the brand preferences of adult smokers. And that results in being able to identify smoker share.

MR. HOWARD: Off the record.

THE VIDEOGRAPHER: Off the record at 1:52.

(Recess taken.)

THE VIDEOGRAPHER: Back on the record at 2:04.

BY MR. STOLPER:

Q. Welcome back, Mr. Mahan.

A. Thank you.

Q. I would like to spend sometime now talking about Philip Morris' marketing efforts. If I could draw your attention to page 2 of your report, the last paragraph on the page, it begins, "I am expected to testify about Philip Morris' specific marketing plans and individual

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advertising campaigns and promotional programs." Do you see where it says that?

A. I do, sir.

Q. Can you tell me what you meant by -- let's do it this way. Can you tell me which specific marketing plans you were referring to?

A. I think first and foremost we are talking about the Marlboro marketing plans, that is the brand I'm responsible for, and I have, I would say, pretty good general knowledge given my history and marketing services of the other brands advertising campaigns and promotional programs and that's what I was referring to.

Q. Marlboro puts out a marketing plan each year; is that right?

A. Yes. We have an annual marketing plan, yes.

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Q. Are there individual marketing plans for the different types of Marlboro cigarettes?
A. When you say the different types of Marlboro cigarettes, you mean like Marlboro Lights?
Q. Yes.
A. No. Marlboro is a singular brand,
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Lights are part of it and the plan is for the Marlboro brand.
Q. There's a marketing plan done each year for Marlboro?
A. Oh, yes.
Q. And that's historically true?
A. Yes.
Q. When you say specific marketing plans, are you referring to any given year for Marlboro?
A. No. I think -- what I mean in this sentence is that I obviously have detailed knowledge about the specific Marlboro marketing plans, I have a history of working on other brands in addition to working in marketing services where I need to know and have familiarity with the other brand plans and that's what I am referring to. I have knowledge of specific marketing plans and advertising campaigns.
Q. Is there anything specific about the marketing plans or the advertising campaigns that you would be -- that you expect to testify about in this case?
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A. I am not sure I understand your question.
Q. There's a lot of information in a marketing plan; isn't that right?
A. I think they are fairly comprehensive, yes.
Q. The current Marlboro marketing plan is several hundred pages long?
A. I wouldn't say it's several hundred pages. I would say it is -- maybe 100.
Q. It's got all sorts of demographic information about the smokers who purchase Marlboro?
A. It has demography in it.
Q. Is there anything specific in that marketing plan that you intend or expect to testify about in this case?
A. Again, I am not so sure I understand the question. If I'm asked about an element of the marketing plan, a specific element of the marketing plan that I have knowledge of, I expect to testify on it. Is it possible, because you are correct, there is a lot of information in the marketing plans, if I am
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asked a question about something in the marketing plan I don't have specific knowledge

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about, I can't testify to it. That's the best way I can answer that question.
Q. I am assuming that everything in that marketing plan you know backwards and forwards and are capable to say what's in there and not in there. What I am trying to figure out is as you sit here today, do you have an understanding of what in the Marlboro marketing plan you would be testifying to this jury about?
A. Maybe I am slow on this issue. I expect to testify in response to questions I am asked about the Marlboro marketing plan.
Q. Do you have an understanding of what those questions may be?
A. I can't know what questions you are going to ask. Again, you know, I shared with you earlier, prior to the break, the belief I have about what the issues might be in this particular case and what I will likely be asked to testify about but I don't have any specific knowledge of what questions you are going to ask me.

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Q. Do you understand that when the trial comes I am not the only one who will be asking you questions?
A. Yes, I understand that. My counsel has -- would ask questions as well, sure.
Q. I guess what I am talking about here is what you are expected to testify on direct examination by an attorney for Philip Morris, what does Philip Morris want you to tell this jury in this case. That's what I am trying to understand.
MR. HOWARD: Objection to the form of the question.
A. Could you say it --
Q. Sure. As you sit here today, what is your understanding of what Philip Morris would like you to tell this jury about marketing plans?
MR. HOWARD: Objection to the form of the question. You can answer.
A. I expect that in terms of direct examination that I will be expected to talk about the kinds of things we do in marketing and to explain the kinds of things we do in

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marketing. And that's the essence of what I believe my testimony will likely be.
Q. And I realize there's a lot that's done at Philip Morris marketing just by the sheer number of jobs you have had in the marketing department, there's a lot that happens there. I am trying to focus in here on what it is about the marketing function that you have an understanding of that's relevant to this case.
Let's do it this way. The next thing in your report you said, moving off of specific marketing plans, you talk about individual advertising campaigns. Do you see where it says

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that, first sentence?
A. Yes.
Q. I am going further along that first sentence. Do you see where it says you are going to talk about individual advertising campaigns?
A. I do.
Q. Are you aware of any advertising campaigns, specific advertising campaigns that you expect to testify about at trial in this case?
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A. I would expect to be asked about the Marlboro advertising campaign.
Q. For any given year?
A. Well, we are going to get into a definitional issue here again. I believe the Marlboro advertising campaign is singular and exists over time. I believe it's the same campaign we launched in 1964 when we started Marlboro Country.
Q. So do you expect to testify about any given years in which that campaign was in place?
A. I expect to testify about something about marketing in given years. I don't know what you mean by testifying about a given year.
Q. Are you planning on telling this jury about the Marlboro marketing campaign since 1964 through 2000?
A. I would expect that I would be -- yes, I would expect to talk about the marketing campaign in 1964, how it was developed, how it's evolved, how it continues to exist today. I think that's a reasonable expectation, yes.
Q. Do you have an understanding of why the jury in this case should consider relevant
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how the Marlboro campaign came about?
MR. HOWARD: Objection to the form. Foundation.
A. I don't understand the question.
Q. What is it you don't understand about it?
A. I just don't understand the question, what the jury would -- could you maybe read it back?
(Record read.)
MR. HOWARD: My objection stands.
A. Could you state it again --
Q. I will go at it a different way.
A. Because I want to understand the question -- would you state -- or do you want --
Q. Let's try it a different way.
Drawing your attention back to that paragraph, it says, reading on further, "I am expected to testify further that Philip Morris' marketing plans and documents related to the design and execution of its marketing plans and programs do not evidence an intent to market to non-smokers or to minors." Do you see that?
A. I do.

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Q. Focus your attention to the last phrase there, "the programs do not evidence an intent to market to non-smokers or to minors." Do you see that?
A. Um-hmm.
Q. It is your expectation that you are going to testify in this case that Philip Morris doesn't have an intent to market to non-smokers or minors?
A. I would expect to testify that Philip Morris does not have an intent to market to non-smokers or to minors, that is correct.
Q. Is there other subjects like this one, this relates to whether or not kids smoke, are there any other subjects that you intend to testify to?
MR. HOWARD: I object to your characterization of what the report says. Also to the vagueness of the question. You can answer it.
A. Could you state it again?
Q. Sure. You have identified a specific marketing practice that you are going to testify to, specifically that Philip Morris does not
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market to non-smokers or to minors; correct?
A. I think it's the absence of a practice but, yes, I would expect to testify that we don't market to non-smokers or to minors.
Q. Are there any other groups that Philip Morris doesn't market to that you plan to testify to?
A. Doesn't market to?
Q. Yes.
A. No. We don't market to non-smoker or to minors, we market to adults who choose to smoke. So I think that pretty much covers the three groups we are talking about here: Minors, no; people who choose, minors or otherwise, not to smoke, no; adults who choose to smoke, yes.
Q. You have identified here in your report a specific market practice or a lack thereof that you are going to testify to. My question is simply this: Are there any other type of specific marketing practices that you plan to testify about in this case?
MR. HOWARD: Objection to the form.
A. Mr. Stolper, I might be being slow
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here, but I expect to respond to questions and testimony in a deposition or in trial to questions about our marketing practices. I expect to be asked, you know, what sorts of things do you do in marketing, what sort of audience are you interested in, how do you go about the business of promoting your product. I expect to testify to those subjects in response to questions about those subjects. In terms of

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anything more specific than that, I view my role here as somebody who has an understanding about what we do and having the responsibility to talk about what we do. That's the best way I can answer the question.

Q. You have identified non-smokers and minors as, I will use your phrase, as audience or audiences that Philip Morris isn't interested in. You said you are going to testify what audiences Philip Morris is interested in and isn't interest in. Other than minors or non-smokers, are there any other audiences that Philip Morris is not interested in selling cigarettes to?

A. I am trying to segment these groups.

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You have minors who we are not interested in, absolutely categorically not interested. Non-smokers we are not interested in. You can't grow share by marketing to people who don't use the product. We are interested in adults who choose to smoke. So when you add those three catalogs of people up: Minors, no; adults who choose not to smoke; no. All minors and adults who choose not to smoke, those are two audiences we are not interested in which leaves adults who do choose to smoke and we are absolutely interested in those folks.

Q. So throughout your tenure at Philip Morris you would say you've never attempted to have individuals initiate smoking?

A. That is correct. I have never been involved in efforts to get anybody who has chosen not to smoke to start smoking. If that's what you mean by initiation the answer is we do not -- that is not part of our marketing plan and that is not what we do.

Q. So you wouldn't consider yourself an expert in why people smoke?

A. I am not an expert in why people

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smoke, that is correct.

Q. Let's focus for a minute on what it is that you do do. In terms of budgets, are you aware of what Philip Morris' annual marketing budget is currently?

A. Yes.

Q. What is that? How much is it?

A. May I ask you a question on this?

Q. Sure.

A. This case involves competitors. Is there anyway this information -- I am happy to give it to you, please don't think I am not --

Q. You are about to enter into an area where there's competitive sensitive information?

MR. HOWARD: Can we have a date cut off? I know we produced documents that have budgets from '94, we can go probably up to '96 without competitive sensitive. Is there a need for today's budget for your claims in this case?

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Q. Mr. Mahan, I know you described your involvement in this case. I don't believe you mentioned getting involved in responding to interrogatories. Do you know what an

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interrogatory is?
A. I probably couldn't give you a lawyer's definition of it but I believe I know generally what it is.
Q. What's your understanding?
A. It's written questions that require a written response and it's a matter of record.
Q. Have you seen any of Philip Morris' written responses in this case?
A. I do not recall seeing any, no, sir.
Q. Have you been asked to provide information in response to questions posed to Philip Morris?
A. I don't recall -- I don't recall giving written responses, providing information in regard to written responses in this case, no.
Q. Just by the way you answered that, did you give any oral information or did you communicate orally?
A. In response to questions in an interrogatory?
Q. Yes.
A. No, I don't believe I did.
Q. We will take a ball park hereof 1995.

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Do you recall?
A. I would do better with more recently. 1995?
Q. Let's pick any year in the '90s that you recall. Ball park.
A. 199 -- I can give you a ball park on 1995. Marlboro's marketing budget would have been on the order of a billion dollars and the other brands combined would have been approximately 500 million dollars, Mr. Stolper. Please, I am doing this from memory.
Q. Sure.
A. I am concerned about the sensitivity but probably more familiar with today's than I am with the past.
Q. Your lawyers have the ability to mark the transcript confidential to preclude, I believe, information of a sensitive nature.
MR. HOWARD: If we can just avoid in the first instance, if you don't feel you need the information for your claims, that would be better.
Q. The advertising budget is separate from the marketing budget; is that right?

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A. No.
Q. So all the numbers that you give would cover money spent on advertising?
A. Yes.
Q. How about promotion?

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A. The numbers I am giving you have a brand budget that has everything in it and then you have those brand budgets are rolled up and you have a total.
Q. You talked about market share earlier. Is there a correlation between marketing expenditures and market share?
A. There is a correlation between marketing expenditures and market share, there's probably a stronger correlation of -- there's probably a stronger correlation of certain elements within the marketing plan to market share than of others.
Q. You mean other variables?
A. No, sir. What I am saying is when you say is there a correlation between marketing expenditures and market share, the marketing plan including that brand's budget has line items in it. Some of those items more directly

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correlate to market share than do others is what I am saying.
Q. But as a general matter, the more you spend the greater market share you should obtain. Would you agree with that?
A. I think it's -- yes. Depending upon where the categories are, I would say that's probably generally correct, yes.
Q. How would you rate Philip Morris' marketing efforts relative to the other tobacco companies?
A. I think we've done a very, very good job relative to our competitors in the U.S. marketplace.
Q. Do you have anyway to quantify the target audience, the number of people that received -- were on the receiving end of the 1.5 billion dollars roughly marketing expenditure in 1995?
MR. HOWARD: Objection to the form. You can answer.
A. The intended audience for our marketing expenditures and our marketing programs is the 23 percent of adults in the

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United States who choose to smoke cigarettes, some 45 million adults who choose to smoke cigarettes. That is the intended audience.
Q. I image the 1.5 billion dollars, a good percentage of that is advertising; is that right?
A. Actually, no. You know, we are going back to 1995, so I would have to do some numbers in my head, but I would not characterize advertising as the biggest expenditure of the marketing budget or, for that matter, even among the biggest any more.
Q. What is the biggest expenditure?
A. Right now far and away the biggest expenditure is retail promotion.
Q. Give me an example of retail

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promotion.
A. We do price promotions from time to time and we do product promotions from time to time and when you do a price promotion, for example, we may fund the temporary reduction of the price of Marlboros for a month. We might have a buy one get one free promotion that might last two or three weeks and those sorts of
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expenditures, frankly, account for in percentage terms in today's budget, for example, for Marlboro, would account for just the retail promotion alone would account for somewhere on the order of 75 to 80 percent of the budget.
Q. When you showed up at Philip Morris in 1978, do you know what the largest percentage of the marketing budget was?
A. In 1978 I would suspect -- I would suspect that number would be advertising.
Q. At what point in time did advertising stop being the largest ticket item in the marketing budget?
A. This would be an estimate. I would suggest probably -- certainly by 1993, excuse me --
Q. Bless you.
A. -- maybe by 1991, '92. Excuse me. I didn't mean to sneeze in the microphone.
Q. What is your understanding of the purpose of advertising?
A. The purpose of advertising?
Q. Yes.
A. The purpose of advertising is to
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communicate with your consumers, to reinforce the positioning of your brand and to have adults who choose to smoke be aware of your brand and preferably develop an attachment to it. "This is the brand I would choose to use if I am a smoker."
Q. Does Philip Morris have any way for measuring the efficacy of its advertising efforts?
A. We regularly evaluate whether the campaign is communicating with the consumer. Advertising in this category is not one, I think, that would allow you to draw a straight line between advertising and market share. Do we evaluate, do we talk to consumers about whether or not our advertising is communicating and is it communicating the way we intended to communicate? The answer is yes.
Q. That's done by your marketing information and planning group?
A. They would be among people who would look at our advertising and determine if it communicates, sure.
Q. When Philip Morris is communicating
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with its consumers as you have described, is it

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reasonable for those consumers to rely on the information that's being communicated to them by Philip Morris?

MR. HOWARD: Objection. Calls for a legal conclusion. You can answer if you are able.

A. Can you ask the question again?

Q. Sure. Why don't we have it read back.

(Record read.)

A. Yes, I guess if your -- if your question is does our advertising need to be believable when we say, "Come to where the flavor is," is it reasonable for the consumer to rely on the fact that this is the brand where the flavor is, yes.

Q. That's an example of the type of information that Philip Morris provides?

A. Sure.

Q. I understand that particularly now your responsibilities are brand oriented. But are you aware that Philip Morris has placed advertisements regarding smoking -- regarding

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health claims about smoking?

MR. HOWARD: Objection. Lack of foundation.

A. I am not aware of any advertising where we made a health claim about cigarettes.

Q. Are you aware of whether or not Philip Morris has communicated with its consumers about the health risks associated with smoking?

A. Today Philip Morris has a web site that people can go to. That web site, I think, frankly talks about the risk associated with cigarette smoking and suggests and actually provides links to the public health community for consumers for information about smoking and health, so yes, I think --

Q. How about prior to the web site?

A. We have had advertising about the controversy surrounding cigarettes. I am aware of it. I am aware of it. I don't recall specific ads, but I am aware of it, yes.

Q. Would you say that those ads by Philip Morris, that consumers should believe those ads that you were just referring to?

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A. I think generally when you take out an ad you should -- the ad should be accurate and it should be factual and, you know, it's hard to answer in a hypothetical but I think what's in an ad should be accurate and believable, sure. How can you argue that?

Q. My question wasn't so much about the hypothetical but the ads which specifically you didn't recall but generally you knew there were ads about the risks associated with smoking and that's what I was talking about.

A. I recall ads about the smoking

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controversy. If there is an ad that specifically you would like me to look at --

Q. Let's focus on the ads about the smoking controversy. Do you believe it's reasonable for consumers or smokers to believe the information provided by Philip Morris in those ads?

A. Yes, I think it should be expected, yes.

Q. How about public statements, you have made public statements on behalf of Philip Morris; right?

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A. I have given speeches to outside groups. Yes, I guess that's a public statement.

Q. You have been quoted in the newspapers on behalf of Philip Morris?

A. No, I don't think so. Not unless there's a clipping I missed someplace. I may have been quoted years ago in some trade publications. Remember, I was talking about when I was in sales planning. But I don't recall being quoted in the newspapers in the last 10 years unless there's something I can't recall.

Q. You don't recall giving any statements to the press about Philip Morris' youth prevention program?

A. No, sir, I have never given statements to the press. I gave a speech sometime back, maybe three or four months ago, that talked about some of the things Philip Morris is doing. There might have been somebody from the press there. No one identified themselves as press nor do I believe anything was printed or talked about afterwards, no.

Q. Do you think smokers should rely on

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information or statements made by executives at Philip Morris in the press?

MR. HOWARD: Objection to the form. You can answer.

A. I think smokers -- I think smokers should rely on the warning on the pack and I think they should rely on their doctor's advice and I think they should rely on public health community's advice regarding smoking and I think that should be their source of information with regard to smoking and health.

Q. So Philip Morris shouldn't be a source of information for smoking and health?

A. As I said, we provide links to the public health community, to their web sites, and that I think the most reliable information on smoking and health probably exists within the public health community and I think smokers should rely on what's printed on every pack of cigarettes they buy and what's on every ad.

Q. Are you saying Philip Morris smokers should rely on what executives say in the press?

A. I think they should rely first and

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foremost on what's on the pack, period.
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Q. Other than that, should they rely on the statements made by tobacco company executives or Philip Morris executives in the press?
MR. HOWARD: Objection to the form. You can answer.
A. You know, as I said before, I said what I believe they should rely on. Okay?
Q. I am asking if they should not. I understand -- you say they should be relying on the public health authorities, I assume that to be true, but in addition to that you are aware that Philip Morris executives make statements in the press about cigarettes and the safety of cigarettes?
A. Um-hmm.
Q. You have to say yes or no.
A. I'm sorry, yes.
Q. My question is what should a smoker do in response to that information? Should they rely on the information the Philip Morris executive said in the press?
A. Yes. I think we are saying the same thing.
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Q. I think you testified you submitted an affidavit in I think it was the gray market case on behalf of Philip Morris?
A. I believe I submitted an affidavit in that case, yes.
Q. You are aware that -- you testified earlier that you know that Philip Morris is involved in a lot of litigation; correct?
A. Um-hmm.
Q. Let's take, for example, the recent case in Florida. Are you aware there was a case in Florida, the Engel case?
A. Yes.
Q. You are aware that Philip Morris executives testified in that case; right?
A. Yes, I am aware of our executives testifying in that case, yes.
Q. You are aware that the press reported widely on the testimony of Philip Morris executives in that case?
A. Yes, I am aware of the press and I hate to define widely, but there was a lot of press coverage in the case, sure.
Q. Should smokers rely on the testimony
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given by Philip Morris executives in litigation?
MR. HOWARD: Objection to the form. You can answer.
A. I think on an issue about one's health and about their smoking behavior, they should rely on the people best able to give them that advice, their doctor, the public health community, and I think they should rely on that

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information. I don't -- that's what I think smokers should rely on. They should rely on the fact that it is a product that states very clearly on the pack that it's hazardous, that it's risky, that it can cause disease and that's what I think they should rely on.

Q. I realize you have said that but is that at the exclusion of relying on other information provided by the tobacco company such as testimony in litigation?

A. I just don't think somebody naturally would rely on testimony in litigation regarding an issue like smoking and health. Testimony in litigation is testimony. Again, it's -- as a smoker or a consumer, thinking about who they would rely on for certain bits of information, a

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tobacco executive doesn't immediately pop into mind as being the person that they would rely on. And I, you know, that's the best answer I could give to it.

Q. You are aware that smokers have available to them information from a number of different sources one of which being the tobacco companies themselves; is that right?

A. As I said a moment ago, a lot of sources. There's information about smoking and health on our web site.

Q. I am just trying to get a sense from you what you think it would be reasonable for a smoker to do with regard to the information provided by a tobacco company executive in the context of litigation.

MR. HOWARD: Objection to the form. You can answer.

MR. STOLPER: I will ask it this way:

Q. If I am a smoker and I am made aware of testimony by a Philip Morris executive about whether or not smoking causes lung cancer, should I believe what that Philip Morris executive says? Is it reasonable for me as a

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smoker to believe --

A. I think it's reasonable to believe that somebody testifying under oath is telling the truth, yes. That's different than reliance I think.

Q. I'm confused by your last answer. What's the difference between believability and reliance in your estimation?

A. What I was getting at, Mr. Stolper, is when I think of the term reliance I think of somebody relying on this information. That this is the information I go to and depend on. I think it is -- I think that's different than saying that somebody testifying under oath in litigation is telling the truth. If I am a smoker and I am interested in information about smoking and health, it would seem to me what I rely on what's on the pack of cigarettes, what's on the advertising, what my doctor tells me,

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what the public health community tells me, what the Surgeon General has stated and I think of reliance as being on those people as opposed to reliance on a tobacco executive. That's not to say that a tobacco executive under oath, it

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should be unreasonable to expect that person is telling the truth.

Q. Is it reasonable for a smoker to believe that the information in a Philip Morris advertisement is true and accurate?

A. I think advertisements should be true. Yes, it would be my hope on any ad that I ever create that the consumer believes I am telling the truth when, as I said, I run an ad that says, "Come to where the flavor is," I believe that to be true, I expect the consumer to read that ad and believe it to be true. So my answer is yes.

Q. Are you aware of any ads by Philip Morris that are untruthful?

A. No, sir. I am perfectly prepared to look at ads but we run a lot of advertising so I have no knowledge of an ad that's untruthful.

Q. If I could draw your attention to page 2 of the report. In the last paragraph. In the middle of the paragraph you say -- you refer to various segments of the adult smoker market. Do you see that?

A. Yes.

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Q. What do you mean by various segments of the adult smoker market?

A. There is adult male smokers, adult female smokers, there's young adult smokers, there's older adult smokers. There are smokers that prefer menthol. There's smokers that prefer regular. There's smokers that prefer 100s. There's smokers that prefer kings. Any market can be examined and looked at in pieces.

Q. Are tracking studies used to study various segments of the adult smoker market.

A. The tracking studies include information on segments, that is correct, yes.

Q. By studying segments of the market, does that help Philip Morris identify prime prospects for a particular brand?

A. It can, yes. You could look at a segment of the market that one is underdeveloped in. Clearly Philip Morris' business is undeveloped in menthol so -- so you could look at segments and see opportunities to gain market share, sure.

Q. Do the different brands at Philip Morris appeal to different segments of the

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market?

A. I think it depends on the brands. I think Marlboro, take, for example, Marlboro which is the one I am clearly the most familiar

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with is a broad market base brand that really appeals to all segments of the adult smoking market in the United States. When you take a look at Virginia Slims, for example, obviously it's a brand that has a greater appeal among woman than it does among men. So, you know, after Marlboro the other brands tend to have geography skews, sometimes demographic skews, sure.

Q. Does Philip Morris segment the market by socioeconomic status?

A. I don't know -- do you mean are we segmenting the market or do we look at segments?

Q. Let me restate that.

When looking at various segments of the market, one of the factors that you take into consideration is socioeconomic status?

A. There is no category socioeconomic status.

Q. Are there categories that make up a

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smoker's socioeconomic status?

A. We have, in consumer traffic we have an income break, for example, yes.

Q. Education?

A. We have education break, yes.

Q. Occupation?

A. No, we do not. Not in consumer tracking.

(Mahan Exhibit 2, memo, Bates stamp 1000800650 through 658, marked for identification, as of this date.)

Q. We placed before you, Mr. Mahan, what has been marked as Exhibit 2. For the record, it's an August 7, 1981 memo from Myron Johnston to Jon Zoller bearing the Bates stamp 1000800650 through 658 with a series of cc's on the back.

Have you seen this document before?

A. May I look at it for a moment? This will take a moment.

MR. HOWARD: Why don't we pause the video.

THE VIDEOGRAPHER: Off the record at 2:57.

(Recess taken.)

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THE VIDEOGRAPHER: Back on the record at 3:18.

Q. Have you had a chance to take a look at Exhibit 2?

A. Yes. I have glanced through it. I haven't studied it but I have glanced through it.

Q. Prior to today's deposition had you seen this document before?

A. I can't say with certainty I have. I don't believe I have. I have seen Myron Johnston memos before. I don't specifically recall this one but I can't say for certainty I haven't seen it.

Q. Myron Johnston is an employee of

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Philip Morris?
A. I believe he was an employee of Philip Morris. I don't believe he still works for us.
Q. And Jon Zoller, he worked at Philip Morris as well?
A. Yes, he was, yes, he did.
Q. Do you recall which departments they were in?
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A. Departments had different names at that time. Zoller was responsible for market research, consumer research, I think he was a director, I don't recall his specific title. And Myron, I don't recall Myron's specific title but Myron's area of expertise, I believe, was demography and projections and things of that nature.
Q. Was Mr. Johnston in the marketing department?
A. No, I believe he was in the research department. He wasn't in the marketing group.
Q. I had asked you previously whether or not Philip Morris analyzed smokers or segments of the market by socioeconomic status.
A. That's correct.
Q. Does this document suggest to you that that's in fact what Philip Morris had done?
A. I just want to clarify, I think the question you had asked me is socioeconomic status in tracking and the answer to that question is no, I am not aware of Philip Morris tracking people by socioeconomic status. That's not to suggest that Myron Johnston or somebody
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else may have done ad hoc work where they looked at socioeconomic factors and things of that nature.
Q. But as a marketer of cigarettes, would you consider socioeconomic information about your consumers to be important information to have?
A. I consider as much information about my consumers having knowledge about as possible a good thing to have. I, as a matter of practice, don't look at a category called socioeconomic status, I just don't do it.
Q. How about occupation?
A. I don't look -- again, in the course of running my business I don't look at occupation.
Q. Do you know if Philip Morris has?
A. As I said, ongoing tracking, Philip Morris does not in the tracking reports when I look at smokers share, does not include occupation, socioeconomic status. If the question is are there any times where a consumer is asked what they do for a living, the answer is yes. For example, if you go to a focus
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group, people list what they do for a living, it's part of the questionnaire. But it's not a tool that I use at all.

Q. Are you familiar with the term blue collar worker?

A. I am familiar generally, of course, with the term blue collar worker, yes.

Q. What is your understanding of what that term refers to?

A. I think one would normally think of a blue collar worker as somebody that doesn't work in an office, works in a trade, perhaps skilled, maybe unskilled. I think it would include people who are laborers. And I guess in that general sense, that's what I would contemplate a blue collar worker to be.

(Mahan Exhibit 3, document entitled Blue Collar Workers, 204871615 through 16, marked for identification, as of this date.)

Q. We have put before you what has been marked as Mahan Exhibit 3 and I will identify it for the transcript as a two-page document entitled Blue Collar Workers with a Bates stamp 204871615 through 16. I will represent to you

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the handwritten note, what is on the front page, is not my handwriting. It's how the document was produced to us. Do you recognize this document?

A. No, sir.

Q. Do you recognize the handwriting?

A. No, sir.

Q. Have you ever seen a document like it?

A. No, I don't -- no, I don't know what it is.

Q. You mentioned earlier today when I asked you about the case, what the case was about, you mentioned something about asbestos workers. Would you consider asbestos workers to be blue collar workers under the definition you just gave?

A. I don't know exactly what an asbestos worker does. They manufacture asbestos? Could you describe the job and I can tell you whether I believe it's a blue collar worker.

Q. I mean, that's certainly a possibility, but I just want to get your understanding. You used the term this morning

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in the context of the case. Perhaps you know, perhaps you don't know, I just want to sort of figure out what you know about this.

A. When I think of an asbestos worker if they are involved in the manufacturing process of asbestos, yes, I think I probably -- my first reaction would be it's a blue collar job, yes.

Q. We haven't talked much about your list of documents, materials that came along with your expert report. Do you recall such a list?

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A. Are you talking about the reliance list?
Q. Yes.
A. Yes, I am familiar with that list.
Q. What is your reliance list?
A. I think the reliance list is a series of documents that I am indicating a knowledge of, a familiarity of, upon which my beliefs regarding the subject are formed.
Q. Are these the documents that were provided to you by counsel for Philip Morris?
A. May I take a quick look at the list?
Q. Sure. I didn't mean to keep them
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from you.
MR. HOWARD: I object to the form of that question.
Q. Why don't we mark it as an exhibit.
(Mahan Exhibit 4, reliance list, marked for identification, as of this date.)
(Mahan Exhibit 5, reliance list, marked for identification, as of this date.)
MR. STOLPER: Off the record.
THE VIDEOGRAPHER: Off the record at 3:27.
(Discussion off the record.)
THE VIDEOGRAPHER: Back on the record at 3:28.
Q. We've placed before you what has been marked as Exhibits 4 and 5. They appear to be similar if not identical documents. Is that what you were referring to when you said those are your reliance list?
A. Yes. This is what I recall to be the list you asked me about in your question.
Q. I think the question I posed to you is is this a list of the documents that were provided to you by counsel?
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A. This is a list of documents that I have been involved in the process for collecting and reviewing documents. Part of the process for production in Minnesota and others. This is a list of documents, I can't say I have seen every document on this list, I probably have seen most of them and generally are documents I would use to support my view on the subject.
Q. Were you involved in producing documents in this case?
A. I don't recall producing these specific documents or other ones relative to this case. I just don't have a recollection of it.
Q. So where did those documents come from?
A. I believe this is a general series of documents. I think they have been produced for this case and these are all documents that I have or I should say most all these documents I have familiarity of having been in the process of production and review of documents. And I

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believe these documents, I believe these documents are being put forward as supporting
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those views. If you are asking me did I produce this particular document, I have not.

Q. I don't mean you specifically, but obviously you are aware that Philip Morris produced documents in this case?

A. Yes.

Q. I am asking about your involvement in Philip Morris' production of documents in this case. Did you have any involvement?

MR. HOWARD: Objection to the form of the question.

A. I don't recall specifically handing documents over here. If these are -- there are documents on this list that would be in my charge that came out of my files, I just simply don't recall.

Q. Okay. That helps. You had said earlier you had been provided documents by attorneys in your meetings with Mr. Howard and others?

MR. HOWARD: Objection to the form.

A. I don't think I said I was provided documents, I think I said I reviewed documents.

Q. You weren't provided documents?

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A. There were some documents I was provided with or some documents I took copies of this past week and I don't believe I took any documents in my previous preparation for this case.

Q. The documents you were just referring to you were provided this week, what were they about?

A. It was a document that talked about some research conducted, I don't recall the firm's name, but on behalf of Leo Burnett that had to do with photo clusters. There were some documents, reprint of articles regarding workers and smoking, I don't recall the specific titles.

Q. Do you recall what the sum and substance of those articles were?

A. I think one talked about -- I think the title was "Work Could Be Hazardous to Your Health" and it talked about smoking and working and I really didn't read it. I simply glanced at it, got the gist of it and put it aside.

Q. Do you have an understanding of why those documents were provided to you?

A. Because I believe -- what my

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understanding of the nature of this case is which is the relationship between asbestos workers and cigarette smoking and what I believe to be the complaint in this case, those were documents that seemed to me that the plaintiffs would believe to be relevant.

Q. Do you have an understanding of what

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the gist of the complaint by the plaintiffs in this case is against Philip Morris and the other tobacco companies?

A. I think I have a layman's, non-lawyers gist.

Q. I would be nervous if you had a lawyer's view.

MR. HOWARD: I don't know if the lawyers have a view.

A. Are you asking me what I believe the gist of it is?

Q. Yes.

A. There is a trust that exists from the remnants of the asbestos industry that pays health benefits to beneficiaries, I believe, because of the relationship between asbestos and their health and that the position is is that --

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the tobacco industry bears some responsibility in should reimburse the Trust. That would be a layman's view of it. I don't know if that's exactly correct or not but I think that's the general gist.

Q. Do you know what conduct by the tobacco companies would force them to be -- would make them have to bear responsibility according to the plaintiffs in this case?

MR. HOWARD: Object to the extent it calls for a legal conclusion but you can answer.

Q. You can answer in layman's terms.

A. Could you ask the question again?

Q. Sure. You said -- in describing the case you said that there is something that the tobacco companies including Philip Morris had done that would force them to bear responsibility. I am asking what is your understanding of the conduct of the tobacco companies that would force them to bear responsibility in this litigation according to the plaintiffs?

MR. HOWARD: Objection to the form.

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Calls for speculation, for legal conclusion.

Mischaracterizes the prior testimony.

Go ahead.

A. Again, in a layman's terms, I would make the assumption that the charges that would be leveled against us are not unlike charges that have been leveled in other cases, that we misled and that, you know, that seems to me to be probably the most likely course that the plaintiffs would take. But, again, I have to reiterate I didn't read a complaint, I am making an assumption in that regard.

Q. The case was described to you by the attorneys for Philip Morris; no?

A. Oh, sure, I think when we had conversations they described it in general terms, but the best answer I can give, Mr. Stolper, not being an attorney, is that the

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premise of the case would be not unlike what it's been in other cases.
Q. When you say the allegations against the tobacco companies are about misleading, you think -- you think this case is about misleading the public in general or is there a particular
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segment of the market that's at issue in this case?
MR. HOWARD: Objection to the form. No foundation.
A. As I said, I am making the assumption given the fact that this is a case about asbestos workers that in particular in this case we are dealing with that group of people. That seems to me to be logical given the nature of who the plaintiff is, in terms of being the Trust that is the remnants of the asbestos industry, and I would assume in this case it's specific to that group. But, again, that is the assumption of a layman, not an attorney.
Q. Do you recall whether or not on your list of reliance documents you have got Surgeon General reports included?
A. May I look at it for a moment?
Q. Sure.
A. I don't think so. Can I have a minute to look at this?
Q. Sure. Take your time.
MR. STOLPER: In the meantime, we will mark --
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(Mahan Exhibit 6, 1985 Surgeon General's report, marked for identification, as of this date.)
A. Yes. The Surgeon General, I see the 1989 Surgeon General's report, I see a 1979 Surgeon General's report.
Q. Did you say '89 or '85?
A. '79 and '89.
Q. Are you familiar with those reports?
A. I am certainly familiar with some of the things that are in those reports, yes. 1979, 1989 Surgeon General's reports.
Q. Are Surgeon General reports relating to smoking documents that are readily available to you in the marketing department?
A. I think they are readily available to the public. There's not, to my knowledge, a repository of Surgeon General's reports in the marketing department. People -- not that I am aware of.
Q. But you had at least two of the Surgeon General's reports in your files?
A. They are in the files. I believe this is the files of more than just my files.
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These are files of Philip Morris and I would expect that Philip Morris would have Surgeon General reports in our files, of course.

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Q. Are you familiar with the 1995 Surgeon General's report?
A. I don't have a recollection of it right now, no.
Q. We put before you what has been marked as Exhibit 6, the 1985 Surgeon General's report entitled "The Health Consequences of Smoking, Cancer, Chronic Lung Disease in the Work Place."
A. Yes, I see it.
Q. Have you ever seen that document before today?
A. I have seen Surgeon General's reports before. I don't recall whether I saw this specific one or not.
Q. You are aware Surgeon General's reports come out annually regarding smoking?
A. Yes, sir.
Q. How many people work in the marketing department at Philip Morris today?
A. Some leeway, I would say between 180

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and 200.
Q. Would you say that those 200 folks are familiar with the Surgeon General's reports as they are released each year?
MR. HOWARD: Objection to form. Foundation. Go ahead.
A. I think people in the marketing department in Philip Morris when the Surgeon General's report is released, there's press coverage regarding it. If there's commentary about it they would be, you know, conscious of that. I don't believe that people in the Philip Morris USA marketing department, you know, get the Surgeon General's report every year, no.
Q. Is there anybody in the marketing department that is asked to analyze or respond to the Surgeon General's reports on an annual basis?
A. There is nobody in the marketing department, to my knowledge, that's asked to respond to the Surgeon General's report.
Q. How about at Philip Morris in general?
A. I don't know of anybody that is asked

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to respond -- somebody doesn't have a job we respond to the Surgeon General's report.
Q. Do you know if Philip Morris issues press releases in response to Surgeon General's reports?
A. I think Philip Morris issues press releases on issues that come up and are newsworthy, of which the Surgeon General's report when it's issued probably more often than not is that sort of event, but there's nobody that has the job of responding to the Surgeon General's report.
Q. Whose job would be it to respond to the Surgeon General's report when Philip Morris

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does issue press releases in response?
A. It would likely be someone in a corporate affairs function, I think, that would write the release. And occasionally there have been public spokesperson, again, when something of particular newsworthiness comes up, goes on television, but it would largely be in the corporate affairs department. It certainly wouldn't be in the marketing department.
Q. Do you know how many smokers there
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are today?
MR. HOWARD: In the U.S.?
MR. STOLPER: In the U.S.
A. I know how many adult smokers there are in the U.S., yes. Roughly.
Q. Roughly.
A. About 45 million.
Q. Do you have an understanding of what percentage of that 45 million fall into the category of blue collar workers?
A. No, sir, I don't.
Q. Do you think it's a significant percentage?
A. I wouldn't think it would be insignificant. But, again, I don't look at data that says blue collar workers, white collar workers. I don't know.
Q. Are you aware of any differences in the smoking prevalence between blue collar workers and white collar workers?
A. No. Not -- again, I haven't looked at data about smoking prevalence, blue collar worker, white collar worker.
Q. I will do it in the context of the
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Surgeon General's report. If I could draw your attention to a specific reference in that document. I am in the introduction section, which is a letter, introduction written by the Surgeon General dated May 31, 1986. I am on page XI. Roman numeral XI. Do you have page XI in front of you?
A. I do, sir.
Q. I would like to draw your attention to the last paragraph above the heading, "Smoking control in the work place." Do you see where it reads, "On the average, blue collar men initiate smoking approximately 14 months earlier than white collar men." Do you see where it says that?
A. I see that sentence, yes.
Q. Were you aware of that fact?
MR. HOWARD: Objection to the form. Lack of foundation. If you give me a continuing objection to using a document that the witness has said he has not seen.
MR. STOLPER: Fair enough.
A. I'm sorry, could you ask --
Q. Do you see where it says the Surgeon
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General states that on the average blue collar men initiate smoking earlier than white collar men? Do you see that --
A. Yes, I see that statement.
Q. Were you aware of that fact, blue collar initiate smoking earlier than white collar men, prior to having read it in this document today?
A. I believe there was a document that I looked at in preparation for this case that made a similar claim. Other than that, I have -- I was not aware of it, no.
Q. You have no way of knowing one way or the other whether that statement in the Surgeon General's report is accurate?
A. I have no way of knowing it, no.
Q. Just a little bit further down on that paragraph, I draw your attention to the sentence that reads, "Even with this earlier age of initiation, a substantial fraction of blue collar workers begin smoking coincident with their entry into the work force." Do you see where it says that?
A. I do.
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Q. Were you aware of that fact prior to reading that statement in the document?
A. I was not.
Q. Going further, it says, "Blue collar workers are less likely than white collar workers to be able to successfully quit smoking." Do you see that?
A. I see it.
Q. Were you aware of that fact prior to reading that statement in this document?
A. No, I was not.
Q. Again, you have no way of knowing whether that last sentence that we just read is accurate?
A. I don't know whether it's accurate or not, no, sir.
Q. So, as you sit here today, you are not aware of any characteristics of smoking habits of blue collar workers as a segment of the adult smoker market?
A. Again, first of all, you know -- you've shown me a list of different sorts of workers but, you know, you are segmenting between blue collar and white collar which is a
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segmentation I don't even look at. I just -- so the answer is no.
Q. Do you know if anybody at Philip Morris has ever looked at the market segmenting it by blue collar and white collar?
A. Not to my knowledge, no, sir, but -- not to my knowledge.
Q. Do you know whether consumption of cigarettes decreases as the level of education of smokers increases?

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A. The consumption --
MR. HOWARD: Objection to the form.
A. The consumption of cigarettes?
Q. Um-hmm.
A. No, I am not aware of that.
Q. Are you aware of any correlation between education and the amount of cigarettes an individual smokes?
A. No, I am not -- I am not aware of any correlation, none that I can think of, between education and the amount somebody smokes, no.
Q. You stated earlier I believe that Myron Johnston, his role was in demography at Philip Morris?

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A. I believe his professional expertise was demography, projections and research of that nature.
Q. Do you know how long he was at Philip Morris?
A. No, not really.
Q. Did he hold a senior position?
A. I believe it was below a vice president's level but I don't -- I believe it was a director level job.
Q. To whom did he provide his research, do you know?
A. I think he provided it primarily, based on what I have seen, primarily to Mr. Zoller and to folks who were involved in forecasting.
Q. That would be in the consumer research department?
A. No, I think -- again, Mr. Stolper, this is what my belief was, it was more he produced information to Zoller who was research. I think his information was also used for production and planning.
Q. When you say production and planning,

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is that a separate department or production and planning by the marketing folks?
A. No, I am thinking not by the marketing folks, I am literally thinking of the term planning future production, what department it was in when Mr. Zoller was doing it I wouldn't know exactly. Or when Mr. Johnston --
Q. Research about demography or demographics of smokers is something that you would need -- is information you would rely upon in the marketing department; isn't that right?
A. Oh, we look at the demography of smokers, yes, sir.
Q. As you sit here today, do you have any understanding of a correlation between occupation and cigarette consumption?
A. No, I don't look at smokers by occupations, so no.
Q. Are you aware of smoking, the prevalence of smoking among asbestos workers?
A. I am not, sir.

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Q. Do you have any understanding about whether or not it's more difficult for blue collar workers to quit smoking than it is for
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white collar workers to quit smoking?
A. No, sir. Again, I don't segment smokers blue collar or white collar, so no.
Q. Is there anybody at Philip Morris that would have that type of information or expertise?
A. Not that I am aware of.
Q. Do you know if Philip Morris or anybody else in the tobacco industry has ever retained an outside firm or consultant to study smoking prevalence among blue collar versus white collar workers?
A. I am not aware of it, sir.
Q. Are you aware of any correlation between cigarette consumption and income?
A. Not cigarette consumption, sir, no. I am aware of some correlation between incidence and income.
Q. What do you mean by incidence?
A. Smoking incidence.
Q. The number of people who smoke or don't smoke?
A. Um-hmm.
Q. How does that correlate to income?
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A. I think at the lowest income level there is a higher incidence of smoking than the higher level.
Q. How about cessation, are you aware of any correlation?
A. No, sir.
Q. Are you aware of any correlation between the incidence of smoking and occupation?
A. No, sir. Again, I don't --
Q. I don't mean to be repetitive, I just need to run through my outline.
Any correlation between the incidence or consumption of cigarettes and education?
A. Lower incidence at higher education level versus incidence of smoking at lower educational level, yes, I am aware of that.
Q. In other words, the more -- the correlation is the more education you have the less likely you are to start smoking?
A. No, sir, I didn't say that. I said I am aware of some numbers that show a lower incidence of smoking among people with higher education than people with lower. I am not translating it to an individual. This
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individual went to college, he is less likely to smoke. Or she.
MR. STOLPER: We will change the tapes very briefly.
THE VIDEOGRAPHER: Off the record at 4 p.m.

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(Recess taken.)
THE VIDEOGRAPHER: Back on the record with tape number 3 at 4:18.
(Mahan Exhibit 7, Retail Direct Marketing database document, marked for identification, as of this date.)
Q. Mr. Mahan, before we turn to Exhibit 7, I know you've testified that in your mind you don't segment the market by occupation or blue collar versus white collar. But I would like to ask you a series of questions now about blue collar smokers. Or blue collar workers who smoke.
There were others at Philip Morris who did analyze the distinction between blue collar and white collar smokers; isn't that right?
A. Not that I am aware of, Mr. Stolper.
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I am not aware of anybody segmenting smokers into these buckets.
Q. If I could draw your attention to what has been marked as Exhibit 7. Take a moment to look at the document. Do you recognize the document?
A. I know what this document is. I don't recognize this specific document. It's Retail Direct Marketing, yes, sir.
Q. Can you tell us what this is?
A. I believe what this is is a printout from a database we used to use and I think, I wasn't involved in the construction of the database, but this is a database that uses a combination of latitude and longitudinal coordinates for a store and then uses the census data and reports on the census data of the neighborhoods surrounding that store, if I recollect correctly what the retail database was.
Q. That's a Philip Morris database?
A. I honestly don't recall whether this database was purchased. I know some years back this was, I believe there was one that was
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called Market Metrics, it was kind of an off-the-shelf package. I don't recall whether Retail Direct Marketing database was one of our construction or whether it was a package program, I simply don't remember.
Q. My question probably could have been more precise. It was something that Philip Morris utilized?
A. This was something -- yes, I believe it was utilized typically by sales folks, yes.
Q. Do you see right in the heading there's a reference to suburban white/blue collar?
A. Yes.
Q. Do you see that information is tracked on the first three pages of this document?

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A. Yes, I see it.
Q. Does that indicate to you that that information was important information for Philip Morris -- whoever generated this at Philip Morris -- to consider?
A. Well, if I recall retail direct marketing, what it is is the data was used to
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identify a store and a neighborhood around the store and they were trying to learn as much about the neighborhood around the store. Obviously it was information that was collected. And it's there. Obviously people found it of some interest or it wouldn't be in the report.
Q. The people who found it of interest are the people in the Philip Morris marketing department; is that right?
A. No. As I recall, to the contrary. The Retail Direct Marketing database was used primarily, if you recall when I said at a point in time I was an area manager, this is later than that, but an area manager who had a chain of stores would do an analysis of that chain, where their stores were, and this database would plot a store, if I recall it correctly, actually plot it, the store on a map, and it used census data to describe the area around the store and it was primarily used, I think, by sales. It's entirely possible marketing folks might likewise use it but, as I recall the database, it was primarily used in a sales function, because as can you see, it deals with a specific chain.
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Q. The title up at the top, Retail Direct Marketing, where did that title come from?
A. I believe, again, this was the title of the program that created this information. I mean, I recall it -- again, we are doing this from recollection, I recall it as the RDM database, the Retail Direct Marketing database and what it has to deal with is, again, here's a retail store and you could take a look at that retail store and evaluate the surrounding area. And I don't want to suggest to you nobody in marketing may look at this information or use it but, as I recollect it, it was primarily a tool used by sales manager to talk to their accounts about where their stores were located and to talk about the people and the area around the stores. And it included -- it included, you can see, the income range, where the people in the stores were a certain ethnicity, what was the nature of the household, et cetera.
Q. Was this program nationwide?
A. I don't believe so. I don't think it existed in field sales. I think it existed
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primarily in headquarter sales but I don't know, it might have been. I was out of the sales

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organization at the time.
Q. When you say headquarters sales, you mean it was limited to New York?
A. Yes. I think within New York you have in the sales function -- you have people that are called national account managers and they have the big chains and I think they used it. Having said that, it's possible it was available in what we call some of the section offices in the field. I simply don't recall.
Q. Do you see in the headline it says Knoxville Market, first page?
A. Yes.
Q. A couple of pages, if you turn to the fourth page, it has a series of Wal-Mart stores?
A. Um-hmm.
Q. Do you see under the state it lists, Tennessee, Georgia?
A. Um-hmm.
Q. Virginia?
A. Yes, sir.
Q. Does that indicate to you that this

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information about the demographics was available outside of New York?
A. I think you are misunderstanding what I am saying. This was a program that I believe existed in New York that somebody if they were talking to Wal-Mart could run a program and plot any Wal-Mart store in the country and then they could look at it. It may have -- having said that, it may have been available in the section sales offices. I know it was available at the New York office.
Q. When I meant available, if you are sitting in Philip Morris' headquarters across the street with this system, you had the ability to pull up smoker demographic information nationwide; is that right?
MR. HOWARD: Objection to the form. You can answer.
A. Well, I don't know whether that's true because if I recall it, if I recall this correctly, if I recall this correctly, what it did is it plotted a store and it talked about the demographics of the area surrounding the store. That's why I say I think it was largely

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a sales tool. I don't think it was talking about smokers in, you know, in this specific area. But again, it is -- it's my recollection today that it was essentially, as I said, a tool -- if you owned the chain and I went to call on your chain and you had 50 stores and I could say to you I know something about your stores, I know something about your customers, you could run a program, the stores would replot it and I could talk to you about the customer base around those stores and that's the way I recall it.
Q. But would you agree that one of the

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pieces of information that at least the salespersonnel at Philip Morris thought important in obtaining through this program is the distinction between white and blue collar workers?

A. I think it's included in the printout. Again, I think it's included in the printout and people were obviously interested, it's in the printout and that's my best recollection of it. I also -- I don't want to leave you with the impression that only a

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salesperson may look at this. A marketing person may. I recall it primarily as a sales tool.

(Mahan Exhibit 8, July 12, 1992 memorandum from Mr. Johnston to Mr. Daniel, marked for identification, as of this date.)

(Mahan Exhibit 9, memo dated January 22, 1982, marked for identification, as of this date.)

Q. Again, Mr. Mahan, what we are talking about now is Philip Morris' interest in tracking blue collar versus white collar smoking. We put before you what has been marked as Exhibit numbers 8 and 9. I will identify Exhibit 8 for the transcript as a memo from HP Long to SP Pollack --

A. I have that as number 9.

Q. Both 8 and 9 are memos to HP Long and SP Pollack. 8 is dated January 18, 1992 and Exhibit 9 is January 22 --

MR. HOWARD: We have as Exhibit 8 a July 12, 1992 memorandum from Mr. Johnston to Mr. Daniel.

MR. STOLPER: Put that one aside.

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Mark this as Exhibit 10.

(Mahan Exhibit 10, memo dated January 19, 1982, marked for identification, as of this date.)

Q. You should have in front of you what has been marked as Exhibits 9 and 10. 9 and 10 are Philip Morris internal correspondence from HP Long to SP Pollack, Exhibit number 10 is dated January 19, 1982 and Exhibit 9 is dated January 22, 1982. Is that what you have in front of you?

A. I'm sorry to keep doing this to you, I think 9 is January 22 and 10 is January 19.

Q. That's right. Take a moment to -- have you seen these documents before?

A. I don't specifically recall them. I can't say I haven't.

Q. Do you know who HP Long is?

A. That's Henry Long.

Q. Who is Henry Long?

A. Henry Long works in our finance department. Worked in our finance department. I am trying to think what Henry is doing right now. His background is finance. I can't

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recall -- Henry is in finance, I don't know whether he is an assistant controller, I can't recall what his title is today.

Q. Do you know who SP Pollack is?

A. I believe that would have referred to Shepp Pollack who was at that time president of Philip Morris USA.

Q. Do you see in these two memos the subject is blue collar disposable income?

A. Yes, I see that in the title.

Q. Do you have an understanding of why Mr. Long would be writing to the president of Philip Morris USA about blue collar disposable income?

A. May I look at it first?

Q. Sure.

A. Should I look at this one?

Q. Either one.

A. This may take a couple minutes.

Q. Let me know when you are ready.

A. Okay. I read them quickly.

Q. We will take them in date order. First let me ask you the cc's. There's a DH Nelson and a J Mowrer on both memos as cc's. Do

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you know who they are?

A. Mowrer I don't. Beane in 1982 I believe was the chief financial officer -- I believe, again, I wasn't working in the New York office in 1982, Beane was in finance I believe and Doug Nelson I believe was in finance, as well as Henry. Mowrer, the name, frankly, I don't know. I don't know who he was or she was. I shouldn't presume and say it was a he.

Q. Having looked at these documents in a little more detail, have you seen them before?

A. I don't recall seeing them before, sir, no.

Q. You said Mr. Pollack was at the time the president of Philip Morris USA?

A. I believe this is Shepp Pollack who at that time was president of Philip Morris USA.

Q. These memos discuss the price elasticity of blue collar spending power?

A. That's the general gist of them. I read them quickly. But yes, um-hmm.

Q. Would you agree that Philip Morris at this time frame was monitoring blue collar cigarette consumption?

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MR. HOWARD: Object to the form. Foundation.

A. I don't know whether I would agree with the characterization monitoring. I have in front of me two documents that somebody obviously looked at the disposable income of blue collar workers however they defined it. I can't dispute that. The documents say what they say. I am not aware of a monitoring and I

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believe I have testified how I view my business and what I track in tracking and it's not a characterization I use. The documents are what they are.

Q. Putting aside the terminology of tracking and monitoring, looking at these documents, don't they indicate that blue collar workers are an important component of the market of smokers for Philip Morris?

A. Blue collar workers are an important -- blue collar adult workers who choose to smoke are an important component of the marketing, I wouldn't dispute that at all.

Q. Due to that importance, Philip Morris has analyzed that segment of the market at

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various times?

A. I don't know what you mean by analysis. Philip Morris clearly, you can look at this document, clearly analyzed blue collar disposable income with respect to price increases and excise tax increases and reported on it.

Q. Philip Morris wouldn't want to lose market share among blue collar workers; correct?

A. Philip Morris doesn't want to lose market share among any group of adult smokers who choose to smoke including blue collar. I wouldn't want anybody to be left with the impression that I am not interested in marketing to adults who choose to smoke whether they are blue collar or not.

Q. Do you market cigarettes to blue collar workers today?

A. I market cigarettes to adults who choose to smoke of which a portion is blue collar workers, yes.

Q. What efforts do you make to -- what marketing efforts do you make to focus on that particular segment of the market?

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A. I don't make efforts to focus marketing on blue collar workers, I simply don't do it in my job.

Q. Are you aware of others at Philip Morris who have done so?

A. I am not.

Q. Ever?

A. I am not aware of anybody targeting blue collar workers. What I am aware of is all the people that market brands and sell brands at Philip Morris are interested in adult smokers who choose to smoke and obviously blue collar workers make up a portion of that population, but I am not aware of any programs that, okay, here's a program we are going to design for a blue collar worker. It simply has never existed in my experience, I am unaware of it.

Q. How about a program where the primary prospect of the program would be blue collar workers?

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MR. HOWARD: Objection to the form.
You can answer.
A. Again, if you were to take a brand like the one I am responsible for, it appeals to
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the breadth of the adult smoking population in the United States and there has simply not been a circumstance in which I have ever been involved in with this brand or other ones I have worked on and said, you know, this is how we create a program for blue collar workers. I simply haven't done it.
Q. Are you aware at any point in time whether or not a particular Philip Morris brand of cigarettes was consumed mostly by blue collar workers?
A. No. Again, as I alluded to a moment ago, I don't look at consumer smoker shares and tracking based on a blue collar/white collar cut off. So the answer to that is no.
Q. Isn't it true that Marlboro's market share is highest among the blue collar workers?
A. Could you ask the question again?
(Record read.)
A. Marlboro's market share is highest among blue collar workers -- Marlboro's market share -- Marlboro leads in market share among all demographic groups in terms of income, in terms of age groups in adult smokers, so I would
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assume that Marlboro is the best selling cigarette among blue collar workers just like it is among other groups.
Q. By the 1980s the typical Marlboro smoker was a blue collar worker?
A. By the 1980 -- could you state it again please.
(Record read.)
A. I don't know that I could state that the typical Marlboro smoker was a blue collar worker. Marlboro's got the leading share among women in the 1980s. There could have been women at home. Having said that, I would not dispute for a moment that Marlboro does very well among the blue collar workers.
Q. Isn't it true that Marlboro's ad campaigns are designed to attract blue collar workers?
A. Marlboro's ad campaigns are designed to attract adult smokers of which I don't want to lead anyone with the impression I am not interested in blue collar workers, adults who choose to smoke blue collar or not. I am interested in the Marlboro advertising campaign
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is a campaign that is designed to appeal to the broad range of adult smokers and it's fundamental message is flavor. Our copy line is, "Come to where the flavor is." This is a segment that delivers that flavor and it's not

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targeted against a specific group like a blue collar worker.
Q. Aren't there different ads within that campaign that are intended to have a greater effect among blue collar workers?
A. Over the course of a year we may have 200 different ad subjects and we use those subjects for variety. I know of no ad nor do I ever recall saying that this is an ad that would appeal to a blue collar worker so let's run it. It's just not something -- it's just not something that I really would kind of seem to fit. Certainly not that I can recall.
Q. The Marlboro cowboy is the most famous of the Marlboro ads?
A. I think the Marlboro cowboy is probably the most famous element of the campaign.
Q. Fair enough.

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(Mahan Exhibit 11, Federal Trade Commission report to Congress dated June 30, 1969, marked for identification, as of this date.)
Q. We've put before you what has been marked as Exhibit 11 which I will represent to you comes from among your reliance documents. It's identified as a Federal Trade Commission report to Congress dated June 30, 1969. If I could draw your attention to page 24 of the report under the heading Philip Morris, Inc. If I could draw your attention to the paragraph that begins, "According to the ad man who played a role in creating the Marlboro cowboy, you wanted a man who had made it but worked with his hands." Do you see where it says that?
A. Yes.
Q. Have you ever heard that before?
A. I haven't heard the specific statement. But, you know --
Q. How about the concept that the cowboy was intended to project an image of a man who worked with his hands?
A. I would not -- I would not quarrel

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with the original positioning of the Marlboro cigarette is this is the cigarette a man smokes for flavor. That is our positioning, that is our statement and a symbol of a man smoking for flavor is a cowboy and that is somebody that works with their hands. I mean the cowboy is, you know, an icon of the campaign and cowboys work with their hands.
Q. The idea behind the original cowboy ad was not just to attract cowboys per se to the Marlboro brand; correct?
A. It actually was not designed to attract cowboys per se to the Marlboro brand. The cowboy was a symbol of masculinity. The brands's original position is a flavor based positioning and a campaign was generated on the

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notion that this is a cigarette a man smokes for flavor. It was a flavor positioning. It began in 1954 as a flavor positioning and showed masculine figures. The cowboy evolved from that and the positioning was that this is a cigarette a man smokes for flavor and a cowboy is a symbol of that masculinity and that manhood. He definitely works with his hands, I can't dispute

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that.

Q. Would you agree that the imagery of the cowboy is intended to attract other men who work with their hands like blue collar workers?

A. The imagery of the cowboy is designed to appeal to adults who choose to smoke of which I would say clearly there are blue collar workers in there. I wouldn't want to leave you with the impression we are uninterested in blue collar workers. But the real power, it seems to me, of the Marlboro cowboy is, again, going back to the brand's original positioning which is a flavor based positioning and this is a cigarette a man smokes for flavor and the greatest symbol of that that we found at that time, the company found at that time was a cowboy.

Q. You agree there are different segments of the market of which blue collar workers are one; correct?

A. There are different segments of the market based on income, based on education, based on sex, based on age. I don't think of -- I am speaking for myself here, I don't think of blue collar necessarily as a segment. I think

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of adult smokers, there's a lot of elements that make up the group of adult smokers. As I said, some are male, some are females. I don't dispute that blue collar workers are a group of people in the United States who smoke, no question about it.

Q. But in terms of the response to the ad, you are not suggesting that all segments of the adult smoker market respond to the cowboy ad equally?

A. I don't know whether I would use the term equally but I will tell you what, close. Marlboro is the number one selling cigarette among all adult demographic groups in the population. Marlboro is the number 1 selling cigarette among woman even though it's a cowboy in the campaign. It's the number 1 selling cigarette among all age groups. My personal view of the cowboy and I think one of the things that has been intrinsic to the brand's success is he is the symbol of American flavor. It's not about the fact he works with his hands and somebody else that works with their hands finds that more appealing than somebody who doesn't.

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It's a symbol of flavor, American flavor. I

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don't know how else to describe it.
Q. What segment of the Marlboro market would you least like to lose?
A. I'm sorry, I don't understand.
Q. If Marlboro is about to lose a whole drop in market share and you had the ability to control, hypothetically you had the ability to control which segment of the market that Marlboro currently has that you would have to lose, which would it be?
A. I wouldn't want to lose any segment --
Q. I understand you wouldn't want to lose any --
A. Give me the segments you are speaking about.
Q. Any segment.
A. You have age breaks, you have breaks by sex, you have breaks -- this is multi dimensional. It's not just -- there's males and females, there's age breaks and there's males and females of different age groups. I am not sure I know how to answer that question.
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Q. Today, if you had to describe the typical, the most common Marlboro smoker, how would you do it?
A. It's hard to describe a typical smoker for Marlboro because Marlboro is, as I said before, number 1 among all age groups.
Q. But not all age groups are the same in quantity?
A. I was going to say age groups, sex groups -- sex groups sounds terrible -- groups based on gender. Forgive me on the record. I just -- could you ask the question again. I'm sorry, maybe it's getting late in the day.
Q. Sure.
(Record read.)
A. The median age of the Marlboro smoker is 33 years of age.
Q. Income?
A. I know breaks -- the frequency breaks above and below $30,000. I don't know what the average income of a Marlboro smoker is. Again --
Q. Are there more Marlboro smokers below 30,000 or above?
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A. There's more above.
Q. How about education, college or non-college?
A. It is slightly more not college, 55/45 I believe. I am doing this from recollection. I see a lot of numbers everyday.
Q. Do you ever break out white collar versus blue collar?
A. No, sir. I said that before. I am telling you. I said it several times. I don't have -- I look at -- primarily what I look at when I look at smokers of Marlboro, I look at

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male/female, I look at adult smoker age groups. I look at -- by the way, they are primarily the ones I look at. I can also see above 30,000 below 30,000 and can I see college, no college.

(Mahan Exhibit 12, document, 1002761084, marked for identification, as of this date.)

Q. We put before you what has been marked as Exhibit 12. There's a cover page from the Philip Morris web site and then a one-page document behind it, Marlboro ad, "Why the Tatoo?" And it bears the Bates stamp number

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1002761084.

Have you seen this ad before?

A. This ad?

Q. Yes.

A. I am sure I have -- I just don't -- I am sure I have, I am responsible for the brand. I have done things before. I don't recall it specifically.

Q. You haven't seen every Marlboro ad in the history of Marlboro?

A. No, but I don't recall some of the old ads. I don't know, sir, I may have seen it.

Q. Do you know whether this ad is on your reliance list?

A. I would have to take a look.

Q. Would you be surprised one way or the other whether it was on your reliance list?

A. No, I would not be surprised.

Q. Is this indeed a Marlboro ad?

A. It looks to be a Marlboro ad, yes.

Q. From the 1956 time frame?

A. I would say that's about right.

Q. Do you know who this ad was intended to -- what segment of the market this ad was

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intended to reach?

A. Again, in 1956, I would assume it was intended to reach a broader audience of smokers that were beginning to smoke filter cigarettes. Filter cigarettes began to grow in the period of about 1954. Marlboro was positioned as the cigarette that has filter, flavor, flip top box. That's who I would assume the intended audience was.

Q. Those who were interested in filters?

A. Those who were interested in filter cigarettes, yes.

Q. How to you glean that from this particular ad?

A. I don't glean it, I just have a knowledge from the history of the brand. Marlboro was reintroduced in 1954 as the filter cigarette that stands for flavor and that's when -- shortly after that period of time, that's when we began to use masculine figures in our advertising that had a tatoo on the back of their hand.

Q. The reason for doing so?

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24 A. Again, the brand was launched in the
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1 '54/'55 time period. The positioning of the
2 brand was that this is the filter cigarette that
3 stands for flavor. The positioning was this was
4 the cigarette that a man would smoke for flavor
5 indicating this was real flavor and we used a
6 masculine figure and that was the intent.
7 Q. Do you know if the ad campaign at the
8 time was intended to reach a particular type of
9 male smoker?
10 A. I believe it was intended to reach,
11 again, all adults who choose to smoke
12 cigarettes.
13 Q. Are you suggesting that the tatoo has
14 wide spread appeal among all male smokers?
15 A. No. I think -- again, let me try to
16 describe it. An element in an ad is an element
17 in the ad, it's not the focal point of the
18 message. The brand was positioned as the
19 cigarette that a man smokes for flavor, it was a
20 flavor positioning. In order to communicate
21 that positioning we used masculine figures in
22 the ad. That included part of the ad was a
23 masculine figure with a tatoo on the back of his
24 hand. Because the figures in the ad might have
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1 had a tatoo, that doesn't mean the cigarette was
2 designed to appeal to only people with tatoos.
3 I believe at this time we featured cowboys, I
4 think we featured a pilot. There were a host of
5 figures in these ads that had the tatoo.
6 Q. I understand why -- that Philip
7 Morris wasn't intending to reach only those men
8 with tatoos. You would agree that the purpose
9 behind -- the symbolism behind the tatoo was to
10 attract men who wanted to attribute the
11 symbolism of that image to themselves as
12 consumers; wouldn't you agree?
13 A. Not particularly, Mr. Stolper. And I
14 am trying to explain this in such a way.
15 First of all, this was a positioning
16 about flavor. Flavor that a man, a strong man
17 would appreciate. The message was about flavor.
18 The man was part of the advertising element to
19 communicate that and I -- I realize for somebody
20 that's not engaged in the marketing profession
21 it's difficult, but the man was a symbol in the
22 ad. The brand's positioning beginning in 1956
23 was a flavor positioning originally started,
24 "Filter, Flavor, Flip Top Box," and the
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1 positioning was flavor based. Filter cigarettes
2 were alleging -- this was the filter cigarette
3 that delivers real flavor and the position was
4 this was the man who would smoke for real flavor
5 indicative of delivering real flavor and the man
6 was an element in our advertising to communicate
7 that positioning and it wouldn't be necessarily
8 designed to appeal just to men like himself but

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to really reinforce the flavor position.
Q. Where in the ad do you get the sense that flavor is important?
A. In this particular ad?
Q. Yes.
A. I don't --
Q. You said the ad was about flavor.
A. Yes, I believe -- this looks like an ad that's a teaser about why the tatoo, by the way, I don't know the context in which this ad was dropped. I mean sometimes, you know, ads have been running and maybe people were interested in the tatoo and for all I know the ad was done as an interrupter just to talk about the tatoo. But the notion of flavor was imbedded in the campaign at this time and you

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say the ad -- I was going to say the ad looks to have appeared between the period of 1954 and '62, that's when we were featuring men with tatoos on the back of their hand and it looks like an ad that just kind of put a little talk value in that and asked the question why the tatoo.
Q. So you would agree this particular ad doesn't deal specifically with flavor but was part of a campaign that you claim was about flavor?
A. Oh, yes. I think the ad also harkens to the other ads and the imagery of a man who smokes for flavor. The issue is the man who smokes for flavor.
Q. If I could draw your attention to the part of the ad that reads, "The tatoo is part of the personality of the Marlboro man. It suggests a successful man who has a romantic past, a man who now enjoys the best but, like so many Americans, came up the hard way." Do you see that reference there?
A. Um-hmm.
Q. Do you know why that language is

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included in the ad?
A. I think it is there to talk about the romantic, rich personality of the person involved in the tatoo. I think the idea of a pilot with a tatoo and, you know, that this is a man with a real personality, a genuine man, that's what I think.
Q. The reference to the Marlboro man representing all of those Americans who came up the hard way, do you think that's intending to attract specifically men of a lower socioeconomic status?
A. No. I think it's appealing to American core values. That this is a real man who has gotten to where he is. He is a heroic figure of sorts.
Q. How about the Marlboro man in a construction hat, isn't that intended to appeal to blue collar workers?

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A. Are you talking about an ad -- a Marlboro ad in that period of time --
Q. Any period of time.
A. I don't recall that specific ad. There may have been one, I just don't recall it

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but -- I'm sorry, ask the question again.
Q. You are not aware of any Marlboro ad where there's a Marlboro man with a construction hat?
A. It sounds familiar. Could I just --
MR. STOLPER: I will mark that.
(Mahan Exhibit 13, ad with Marlboro man in a construction hat, marked for identification, as of this date.)
Q. We've put before you what has been marked as Exhibit 13 which is what you have been asking for which is an example of a Marlboro man in a construction hat. Are you suggesting that imagery in this ad is intending to appeal equally to all adult male smokers?
A. Absolutely. I would harken back to what I said a moment ago, this is about a real flavorful cigarette that a man would smoke and that this figure in this ad certainly in the context of the time is a real man. I am saying that a blue collar worker could look at that ad and have it appeal to him but the message here is about this is real flavor, a flavorful cigarette that a real man would smoke and the

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fundamental message is it's about flavor and the flavor is communicated by saying this cigarette has the flavor that a real man would smoke.
Q. You have testified earlier today that Philip Morris is constantly monitoring the efficacy of the communication of its ads on consumers; is that right?
A. I think I said this morning that we regularly evaluate our advertising to see if it's communicating and if it's communicating the kinds of messages that we intend to communicate and is it reinforcing the brands I mentioned, the brand's personality, yes.
Q. That analysis wouldn't pick up whether the ad was more effective among blue collar workers as opposed to white collar workers?
A. No. I don't recall any -- I don't recall any results where, A, even the question was asked or was the data sought, is it more appealing among the blue collar workers than white collar workers. We are typically more interested, I think, in what consumers generally perceive as the brand's attributes and image and

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personality as opposed to it appealing to a blue collar worker or white collar worker.
Q. But the tracking studies you said are important to do education levels, income levels

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and other levels; correct?
A. They track income levels, education levels, yes.
Q. But according to you, Philip Morris hasn't tracked blue collar versus white collar smoking?
A. I am saying that's not part of the ongoing tracking. I am saying that it is not a cut of the smoking population that I or anybody else I think really looks at. If you are asking me has anybody ever looked at blue collar workers, you have already provided me some documents that somebody looked at them, but it's simply not a major criteria in segmentation.
Q. I am trying to understand the information you have available to you. You have no way of knowing whether or not that particular ad, Exhibit 13, had a greater appeal or impact on blue collar workers as opposed to a white collar workers?

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A. Of course not. An ad that was run in 1956. My answer to the question is what I believe -- my answer to your previous question was what I believe this ad communicates. I don't know of any research done on this ad or the results.
Can we take maybe five --
MR. HOWARD: That's fine. It's time for a break.
THE VIDEOGRAPHER: Off the record at 5:18.
(Recess taken.)
THE VIDEOGRAPHER: Back on the record at 5:35.
Q. Just a few final points. We have been discussing blue collar workers for a while. Is it your testimony that Philip Morris didn't do a single thing to increase consumption among -- cigarette consumption among blue collar workers relative to other segments of the market?
A. It's my testimony that I am certainly unaware of anything in my career that we did to raise the level of consumption among blue collar workers or raise the consumption among any

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smoker, yes.
Q. You mean raise the consumption of blue collar workers relative to other smokers?
A. We don't market our products to raise consumption. I don't try to get a smoker who smokes 20 cigarettes a day to smoke 25. I am interested in having smokers, adults who choose to smoke convert to my brands.
Q. So I will repeat the question and we will do it in terms of switching to Philip Morris brands.
Is it your testimony that Philip Morris has never done a single thing to increase switching, brand switching to Philip Morris brands among blue collar workers relative to the

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efforts to get others in the market to switch?
A. That is correct. It is my testimony that I am unaware of anything we did to get blue collar smokers in particular as a group to switch to our brand vis-a-vis other smokers. We want adults who choose to smoke to switch to our brands or, if they are already smoking our brands, to stay with them.
Q. Among the blue collar worker
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population who smokes, I believe you testified that Marlboro has been the number 1 cigarette smoked among that population; is that right?
A. I believe that to be correct because Marlboro is the number 1 selling cigarette, as I said, among all demographic groups that we measure. Whether that is the age breaks of adult smokers, it's number 1 among men, it's number 1 among women, and I think you can deduce from that that it would obviously be number one among blue collar smokers, yes.
Q. Are there other Philip Morris cigarette brands that are smoked by blue collar workers?
A. I would suspect all Philip Morris cigarette brands have blue collar smokers. I would certainly believe that to be the case, yes.
Q. Other than Marlboro, is there one brand more than another which blue collar workers smoke?
A. Marlboro is clearly number 1, as I said, among all age groups. Are there brands in our portfolio that may have a higher appeal or a
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high appeal to -- again, blue collar, I don't think of that segment. If your question is are there brands that might appeal, have a great appeal among lower income smokers? Yes, some more than others, sure.
Q. Can you name one?
A. I would think discount brands just by virtue of the fact they are less expensive. Probably within that brand profile a significant portion of their smokers might be lower income.
Q. What's an example of one of those brands?
A. You have Basic, you have Cambridge --
Q. Let's stick to Basic as an example. Are ads for Basic designed to target it's core consumer, the one you described as being lower socioeconomic status?
A. I said Basic may have greater appeal among people with lower income, I wouldn't say that's Basic's core smoker. Basic's core smoker is somebody who wants to buy a brand of cigarettes that costs less money and, by virtue of that fact, obviously people that have lower incomes may very well choose to smoke that
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product.
Q. Which of Marlboro's competitors competes with Marlboro for the blue collar worker market?
MR. HOWARD: Objection to the form. You can answer.
A. You use a term like compete for the blue collar market. Marlboro has a variety of competitors. Its, you know, its most notable competitors are the ones that are closer to it in market share, but even there Marlboro is five times as large as the next brand. But there's Winston and there's Camel and there's Newport and any of those brands are likely to have blue collar workers and not an insignificant number of them in their franchise. So I can't -- I don't know whether I would subsect it that way. Doral which is another discount brand by RJ Reynolds probably has a good deal of appeal to people who have blue collar jobs. Any of those brands could be considered Marlboro's competitors.
Q. Are you aware of any of your competitors ads that are geared towards the blue
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collar market?
A. No, I'm not really. I am trying to think of Doral -- there may be ads that feature a blue collar worker in them but I wouldn't necessarily say that, again, they are aimed towards a blue collar audience to the exclusion of others. I mean, Doral is a brand like Basic that invites consumers to shop and compare and look for savings and that may have -- that product may very well have, you know, a high degree of appeal among people of lower economic means, but I wouldn't necessarily view it as being targeted to them.
Q. We have been talking about blue collar workers. Are you aware of any promotional efforts or sampling programs at Philip Morris that were geared towards blue collar workers?
A. No, sir. First of all, we don't do sampling and --
Q. But historically you did?
A. Yes.
Q. So my question is really not just limited to the current time frame.
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A. No, sir, I -- you know, as I recall sampling programs, people would be instructed to sample, for lack of I guess a better way of putting it, time place and economy, adhere to the rules, don't be near a youth center, find a location where you might be able to encounter significant number of adult smokers. But there would never be any instruction to say, okay, we want you to go find a place where there's blue collar workers and sample there. Certainly not to my knowledge.

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Q. How about unions, any efforts to do sampling programs or promotion programs to union workers?
A. Not to my knowledge, sir, no.
Q. That's historically true?
A. Again, not to my knowledge. I can't testify that a sampler might not have sampled at a union hall party, I have no idea, but I have no knowledge of any efforts to sample to unions or to instruct people to sample to unions or promote unions, no, sir.
Q. How about any of your competitors, are you aware of any efforts to sample or

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promote to unions or union members?
A. No, sir. I don't think so. No. Nothing that I can think of.
Q. How about construction workers?
A. No, sir, not that I can --
Q. Are you aware of RJR's work site sampling program geared towards construction sites?
A. No, sir, I'm not. I don't know the program. I would be happy to look at it.
Q. You have listed -- you have testified that you are aware of the 1979 Surgeon General's report and, in fact, you have it listed on your reliance list. Are you aware that a section of the 1979 Surgeon General's report pertains to increased risks of lung cancer among asbestos workers?
A. No, I don't recall that particular section.
Q. Are you aware of that fact, that there's an increased risk of lung cancer among asbestos workers who smoke?
A. I have heard that. I know it is an element of this case.

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Q. Did you know about that before this case?
A. No, sir.
Q. Do you know how long you have had the 1979 Surgeon General's report in your file?
A. In Philip Morris' files?
Q. Yes.
A. I would assume it's probably been there since shortly after it was issued. That would be my supposition.
Q. Do you recall when you first became aware of the 1979 Surgeon General's report?
A. I would say probably in the last -- of that report specifically, within the last two years. As I said before, I have been involved in the process whereby we produce documents for litigation and I, of course, was aware a 1979 Surgeon General's report existed but would have thought about that specific report in that context, I would say, in the last couple of years.
Q. Taking you back to today, you said by

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now you are aware of the fact that there's an increased risk of lung cancer for asbestos
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workers who smoke.
A. I am aware that's been reported, sir, yes.
Q. Do you know if Philip Morris has done anything today to limit sales to asbestos workers who are at an increased risk?
A. First of all, Philip Morris doesn't sell cigarettes to consumers, they sell them to wholesalers who sell them to retailers who sell them to consumers, so I think that needs to be understood to begin with, and no, I don't know of anything we have done to limit sales to asbestos workers or any other group of adults who choose to smoke.
Q. But you do agree that there are smokers who are at increased risk of getting lung cancer, among other diseases?
MR. HOWARD: Objection. Lack of foundation. You can answer.
A. Could you ask the question again?
(Record read.)
A. I am not a scientist to have, you know, to be able to have real knowledge on that subject. You know, I -- it's not something that
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I would quarrel with, no.
Q. Moving away for a minute from the blue collar worker topic.
(Mahan Exhibit 14, document, marked for identification, as of this date.)
Q. Mr. Mahan, I think in your expert report you state that Philip Morris is not looking to attract new smokers but just to increase the share of the existing market of adult smokers; is that right?
MR. HOWARD: Objection to the form. Mischaracterizes.
A. May I see the statement you are referring to in my expert report?
Q. I am referring to your testimony a few minutes ago which is I believe you testified that Philip Morris is not trying to attract new smokers but instead is trying to increase market share among the existing market of smokers; is that --
MR. HOWARD: Objection.
A. I don't think that's precisely what I said, sir. I think Philip Morris is uninterested in convincing somebody who doesn't
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smoke to start smoking. If somebody has made a conscious decision, if an adult has made a conscious decision to smoke cigarettes whether they are a new smoker or not, I would like them to smoke my brand. That's the distinction I would like to make. It's not our intent to make somebody who does not smoke to start.

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Q. Are you familiar with the phrase "a starter" in the context of describing a smoker?
A. I have heard it before.
Q. What does that mean to you?
A. I would assume that means somebody who recently started smoking.
Q. You testified earlier about Philip Morris' web site. Did you have any involvement in the creation of that web site?
A. No.
Q. How about the information that's contained on the web site, did you have any input?
A. Not that I can recall. It's possible somebody might have asked me my opinion about it but not that I can recall.
Q. Is there any marketing personnel
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dedicated to creating the web site?
A. No, sir.
Q. Do you know who at Philip Morris was involved in the creation of the web site?
A. I think it was mostly -- I think it was a series of folks. I think it was corporate affairs primarily who would have spearheaded the development of it. I think they owned the process of constructing it. And just to clarify what I said in terms of marketing people being involved in it, I don't want to testify that it's not possible that a marketing person may have been asked a question about it, but the responsibility for its development rested elsewhere, it was public affairs I believe.
Q. When you were in sales you were obviously aware of increases and decreases of sales and cigarette consumption of Philip Morris products; correct?
A. You would surely be aware of increases in share and volume, yes.
Q. And you were in sales in 1979?
A. I was still a sales representative in 1979, that's correct.
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Q. Are you aware of the sales consumption of Philip Morris products right after the release of the 1979 Surgeon General's report?
A. I'm sorry, would you state the question again?
(Record read.)
A. I am not sure I know what you mean by sales consumption. Are you talking about a sales figure?
Q. Isn't it true that cigarette sales declined after the release of the 1979 Surgeon General's report?
A. I would have to go back and look at sales figures at the time. I simply don't recall, sir.
Q. Isn't it a general phenomena that shortly after the release of the Surgeon

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General's report on smoking cigarette sales declined across the board?
A. Again, you know, if you are telling me that occurred I won't argue with you. Without looking at the sales numbers, we are going back somewhere on the order of 21 years, I

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simply don't recall.
Q. So as you sit here you have no understanding of what the impact of the Surgeon General's report is on cigarette sales or consumption?
A. No, I am not saying that. I recall a Surgeon General's report, I forget what year, there was an increase in ultra low tar cigarettes after that report was issued so I can recall sporadic years, but I don't have any recollection specifically of the 1979 Surgeon General's report and what happened to sales as a consequence or immediately following the issuance of that report. I just simply can't recollect the sales numbers. I was a sales representative at the time and had a fairly small territory. I just don't recall it.
Q. Are you aware of any events during your tenure at Philip Morris that led to a decline in cigarette sales?
A. Oh, yes. The most notable one it seems to me is following the pricing actions that were taken at the end of 1998, the industry experienced about a 9 percent decline in volume

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in 1999. That's the one that is most striking in my memory.
Q. That's not what's referred to as Marlboro Monday or Marlboro Friday?
A. Marlboro Friday, yes.
Q. When was that?
A. Marlboro Friday was April 3, 1993.
Q. What was that?
A. Marlboro Friday was -- the common belief was we announced a price reduction on that day. In fact, we really announced we would be reducing the price and it was a price freeze and promotion announcement stating that we needed to readjust the price of Marlboro and that occurred on April 3, 1993.
Q. Did sales decline shortly after that Marlboro Friday?
A. You are using the term sales. I think after Marlboro Friday, Marlboro share and sales actually increased.
Q. But the market overall declined?
A. I believe -- again, I would have to look at the data. I believe the market at that time was really on it's ongoing trend of

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probably a 1 to 2 percent decline.
Now having said that, I don't know where the numbers bear out. I think that's a

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long term trend line because at the same time of Marlboro Friday because of the price reduction, there were wholesale inventory dislocations so the numbers from the shipment standpoint were difficult to read, but I think probably the best characterization of what was going on in the industry was a decline rate of probably 1 to 2 percent but it's a number I would want to check.

Q. During your tenure at Philip Morris, beginning in 1977, you've seen an increase in the banning of smoking in the work place around the country; isn't that right?

A. Oh, there's no question that between 1977 and today the places where one is permitted to smoke are far fewer than they were 23 years ago including the work place, yes.

Q. Do you have an understanding of the impact of work place smoking bans on cigarette consumption?

A. No, sir, I have never -- I am not aware of any work that has been done that

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attempts to show a correlation or a causal relationship between bans, a smoking ban in the work place and cigarette volume, I am not aware of such.

Q. Are you aware of any negative impact to Philip Morris resulting from the increase since '77 of smoking bans in the work place?

A. Again, I couldn't attribute it specifically to smoking bans in the work place. The fact of the matter is since I believe -- somewhere around '80, '81, somewhere in that time period, the early '80s, the industry has experienced a decline rate of somewhere on the order of 1 to 2 percent and that decline rate has been fairly constant with the exception, again, of a period in 1998 where pricing escalated sharply following the master settlement agreement and there was a sharp decline and I think the industry continues to be on a 1 to 2 percent decline rate. So we've been -- the industry has been in a long term 1 to 2 percent decline rate and I think that's a function of a whole host of factors, one of which may be work place bans but I can't draw a

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distinction --

Q. Were you aware of the onset of work site smoking bans when you first arrived at Philip Morris in 1977?

A. I think of smoking bans occurring, really beginning to occur a few years later than that. Even when I joined Philip Morris in 1977 smoking was a controversial issue, there were places where you couldn't smoke, but they didn't seem to be as much the norm as they are today and I suspect that occurred someplace in the 1980s.

Q. In the time frame of '77 to 1980, the first few years you were at Philip Morris, was

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there any concern among you and your peers among Philip Morris about the onset of work place smoking bans?

A. Not that I am aware of.

Q. You mentioned that smoking when you first got to Philip Morris was controversial. I think you testified earlier about ads or marketing pieces that Philip Morris has put out to the public regarding the health effects of smoking. Were you involved at all in any

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marketing efforts with regard to the smoking controversy?

A. No, sir.

Q. Do you know anyone in Philip Morris who was?

A. If I could see a copy of -- because I -- I have a general recollection of the ads and if it's the group I am thinking of, I might, but I would like to know what I am talking about before I say so and who was involved in it.

Q. Did you have any involvement with the Tobacco Institute?

A. I had a little bit of involvement with the Tobacco Institute in 1997. And it was very, very sort of tangential. It was the Food and Drug Administration had proposed regulations, regulations of the industry and there was subsequently a proposed resolution that was put before Congress that included new ways to measure readership and a task force was constructed with -- a task force of people in the industry to look at that and I believe it was done under the auspices of the Tobacco Institute and their counsel but it had nothing

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to do with smoking controversy, it had to do with readership methodologies. And I believe that was done, I believe that was done, as I said, as an industry joint effort under the Tobacco Institute.

Q. Just wrapping here, I have a few questions that are too difficult to segue in any other way. Page 3 of your expert report you state, "I may be asked to comment on the opinions expressed by other witnesses as well as the evidence they rely upon."

A. I'm sorry, could you --

Q. Page 3, there's a paragraph that begins, "Finally." If you take a second to read that paragraph.

A. Yes.

Q. Have you been asked to comment on the opinions expressed by other witnesses?

A. In this case?

Q. Yes.

A. No, not that I am aware of.

Q. Have you seen testimony or reports of other witnesses in this case?

A. No, I have not.

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Q. Do you anticipate having to do so?
A. It gets back into one of these things -- I would expect -- yes, I would expect probably to have to comment on opinions expressed by other witnesses. I think that seems logical.
Q. Any witnesses in particular that you have in mind or are you thinking in general concepts?
A. I don't know what other witnesses may be called. You know, I view this sentence as saying as an expert witness in the area of tobacco marketing, I may be asked to comment on other people who have opinions about tobacco marketing. That's the way I view it. And I may testify as to those opinions.
Q. Do you know who Jan Jones is?
A. Yes, I know Jan Jones.
Q. Who is Jan Jones?
A. Jan Jones is a researcher, she's in R&D based in Richmond. I don't recall her title right now. But I know her, yes.
Q. How about Paige Callaham?
A. I haven't seen Paige in many, many
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years. But I recall her, yes.
Q. Do you know what her position or job function was? She was at Philip Morris?
A. I don't know that Paige is still with us. I haven't seen Paige in a lot of years. She worked in Richmond. I believe she worked in a research function but I just -- I just don't recall.
(Mahan Exhibit 15, memo dated November 7, 1988, 2022259027 through 039, marked for identification, as of this date.)
Q. Take a quick look and see if you recognize this document. We put before you what has been marked as Exhibit 15 which I will identify for the transcript as a memo from Paige Callaham to Jan Jones on Philip Morris letterhead dated November 7, 1988 bearing the Bates stamp 2022259027 through 039. Let me know when you have had a chance to look through the document.
A. This will take me a few minutes.
Q. Maybe if we could -- I think the first page there's an abstract.
A. I glanced at the abstract.
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Q. Having looked at the abstract -- have you ever seen this document before I gave it to you today?
A. I don't recall it, no.
Q. Is it your recollection that Paige Callaham and Jan Jones were at least as of 1988 were working in the consumer research group?
A. Um-hmm.
Q. That's the same group you had testified about earlier?

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A. Well, I don't know that I can exactly distinguish between the two. There is consumer research in New York and there is a research function in Richmond as well. So it's not exactly the same group. And I don't know what the structure was going back this far.
Q. The only difference between the two would be geography or is there job function?
A. No, I think the functions are different. The consumer research in New York I think tends to look more at -- tends to look more at marketing programs, advertising, product positioning, et cetera, et cetera, et cetera, and the research function in Richmond is more

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product based in terms of, you know, consumer perceptions about flavor specifics. It really is much more of one is more heavily product based versus marketing based. They interact with each other on a regular basis.
Q. Is there any group or personnel at Philip Morris that studies consumer perception of the health risks associated with smoking?
A. I'm sorry, would you ask the question again?
(Record read.)
A. No, not that I am aware of. In terms of consumers may raise issues when conducting research about health risks and that information may be picked up, but I am not aware of any research where you research what consumers are thinking about smoking and health. I am not aware of any function that does that.
Q. Is that historically true as well?
A. Yes, sir, to the best of my knowledge.
Q. How about third-parties, Philip Morris ever hire any third-parties to conduct that type of research?

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A. Not that I am aware of, sir.
Q. Drawing your attention back to this last exhibit we've got, I know you haven't seen it but do you see under paragraph number 1 next to the number 1 the statement that reads, "RJR's advertising of Premiere is ineffective in communicating a relative advantage over the consumer's current brand"?
A. I see that.
Q. Were you aware of that information?
A. What information?
Q. That statement.
A. No. I haven't seen the document before.
Q. I know you haven't seen the document but were you aware that -- are you familiar with Premiere?
A. Yes.
Q. Premiere is a product by RJR?
A. Premiere was a product, it was test marketed by RJR.

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Q. Are you familiar RJR test methods?
A. I am generally familiar with them.
Q. This is apparently a memo written by
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Philip Morris personnel reaching a conclusion that RJR advertising of that Premiere cigarette is ineffective. Do you agree?
A. It looks like that's their conclusion, yes, sir.
Q. I know you haven't seen this document, but prior to seeing this document, were you aware of the perception that RJR's advertising of Premiere was ineffective?
A. I am aware of the perception that the test market of Premiere was ineffective. Whether it was attributed specifically to advertising, advertising copy, the product itself, as I recall the Premiere product, it was a product that left a poor odor, unpleasant odor, didn't taste particularly well and their advertising evidently, I don't mean to be disparaging, but their advertising evidently wasn't good enough that I can actually recall what it looked like right now.
Q. You have testified today about what your view of -- what your understanding of the case is. I believe you testified that there would be some allegation that Philip Morris
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targeted blue collar workers; is that right?
A. Yes, I believe that's possible. Again, I don't know -- I haven't read the complaint but I think it's reasonable to believe given the nature of this that that would be one of the accusations that would be made, but that's an assumption on my part.
Q. Is it your understanding that if you testified today that Philip Morris did indeed target blue collar workers, that that would support the plaintiffs' allegations in this case?
MR. HOWARD: Objection to the form.
Answer if you are able.
(Continued on the following page.)
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A. It may support their point of view, but I testified to what I testified today because it's true. That's the best answer I can give to that.
MR. STOLPER: Okay, I've got no further questions.

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MR. HOWARD: We have no questions.
MR. STOLPER: Will you sign and read?
MR. HOWARD: I think we will read and sign.
THE VIDEOGRAPHER: Off the record at 6:20.
(Time noted: 6:20 p.m.)

_____
MICHAEL J. MAHAN

Subscribed and sworn to before me
this _____ day of _____, 2000.

_____

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C E R T I F I C A T E

STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

I, ANDREA L. KINGSLEY, a Notary Public within and for the State of New York, do hereby certify:
That MICHAEL J. MAHAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.
I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.
IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of August, 2000.

_____
ANDREA L. KINGSLEY

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WITNESS	EXAMINATION BY	PAGE
M. Mahan	Mr. Stolper	4

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